166-709

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 261.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF LOUISVILLE.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED APRIL 13, 1895.

(15,867.)

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a UNITED STATES OF AMERICA, }
District of Kentucky, Sixth Judicial Circuit, } ss:

To City of Louisville, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of appeals of Kentucky, wherein The Louisville & Nashville Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of March, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States of America the one hundred and nineteenth.

WILL. S. PRYOR,
Chief Justice Ct. Appeals of Ky.

b Service of this citation accepted.

THE CITY OF LOUISVILLE,
By LAF. JOSEPH, *Ass't City Att'y.*

1 COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the court of appeals of Kentucky, at the capitol, in the city of Frankfort, on the 5th day of March, A. D. 1895, Chief Justice Pryor and Associate Justices Lewis, Hazelrigg, Grace, Paynter, Guffy, and Eastin sitting.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant, }
vs.
CITY OF LOUISVILLE, Appellee. }

Be it remembered that heretofore, to wit, on the 12th day of August, A. D. 1892, the appellant, The Louisville & Nashville Railroad Company, by its counsel, Helm & Bruce, filed in the office of the clerk of the Kentucky court of appeals a transcript of record in words and figures following, to wit:

COMMONWEALTH OF KENTUCKY:

Louisville Chancery Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
CITY OF LOUISVILLE.

Pleas before the honorable chancellor of the Louisville chancery court, at the court-house, in Louisville, Ky., on the dates hereinafter mentioned.

2 And on the 22nd day of April, 1892, came plaintiff, by Helm & Bruce, attorneys, and filed agreed case in the office of the clerk of the aforesaid court.

Said agreed case is in the words and figures as follows, to wit:

Louisville Chancery Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Plaintiff,
vs.
CITY OF LOUISVILLE, Defendant.
45541. Agreed Case.

The Louisville & Nashville Railroad Company and the City of Louisville hereby state to the court the facts hereinafter presented and submit to the court for decision the question hereinafter stated.

Facts.

The Louisville & Nashville Railroad Company is a railroad corporation which owns property in the city of Louisville subject to taxation by the said city. On the 28th day of August, 1891, it returned a report as of July 1, 1891, to the auditor of public accounts of the State of Kentucky, as required by section 1 of article 3 of an act approved May 17th, 1886, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky;" and thereafter, to wit, on December 26th, 1891, said railroad company received from the said auditor a written notice of the amount of its assessment for taxation for the purposes of the city of Louisville, which notice showed said total assessment to be $888,750.00.

3 And a similar notice as to all the railroads having property in Louisville, including the Louisville & Nashville Railroad Company, having been sent by the said auditor to the clerk of the Jefferson county court, a copy of which is filed herewith as Exhibit A, the assessor of said city obtained from said clerk a copy of said assessment, and on December 31st, 1891, made out tax bills against the said Louisville & Nashville Railroad Company based on said notice of assessment, which bills showed that by charging a tax of $2.17 for every $100 of the said assessment the total tax due to the said city of Louisville from the said railroad company upon the said assessment was $19,285.88, which bills said

assessor then listed for collection with the receiver of taxes for said city; and thereafter said receiver presented same with a recapitulated statement of their amounts to said railroad company for payment.

Said bills and statement are herewith filed as parts hereof, marked Ex. B, Ex. C, Ex. D, and Ex. E and "Statement."

Subsequent to the occurrences hereinbefore stated the said railroad company, on February 4th, 1892, tendered and offered to pay to the city of Louisville, in full of the taxes due to the said city of Louisville from the said railroad company on account of the assessment aforesaid, the sum of $18,707.30, which is the balance left after deducting from the aforesaid sum of $19,285.87 a discount of three per cent. thereon, amounting to $578.58, which was the first time said railroad company had ever demanded such a dis-
4 count. The said city denied that the said railroad company was entitled to said discount or to any discount and refused to receive the said sum of $18,707.30 or any sum less than $19,285.87, of which latter sum it demanded payment in settlement of said bill for taxes; and thereafter, to wit, on February 6th, 1892, the said railroad company paid the said sum of $19,285.87 to the said city under protest and with the understanding and agreement between it and the said city, arrived at and made prior to said payment, that the said sum should be paid under protest and that an agreed case should be made and submitted to the Louisville chancery court for the purpose of determining the question of whether or not the said railroad company was entitled to the said discount claimed by it or to any discount upon the taxes paid by it, and, if so, then to how much discount it was entitled.

The said agreement between the said city of Louisville and the said Louisville & Nashville Railroad Company was in writing and is filed as a part hereof, marked "Agreement."

And at the time said payment was made the receiver of city taxes, J. J. Shelly, acknowledged receipt of said payment upon said tax bills and also by signing a receipt for said payment upon a voucher prepared for that purpose by the said railroad company and a copy of which is filed herewith as part hereof, marked "Voucher."

The property of railroad companies in the city of Louisville was assessed for taxation for city purposes by the assessor of the
5 city of Louisville up to and including the year 1877, the assessment in each year being as of the 10th day of January of that year. Since the year 1877 the city assessor has never assessed railroad property in said city. The act of the General Assembly of the Commonwealth of Kentucky entitled "An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation and for taxing same," having been approved by the governor of the State on April 3rd, 1878, the property in the city of Louisville of all railroad companies, including the Louisville & Nashville Railroad Company, was in the year 1878 assessed by the board of equalization provided for by the act aforesaid and has been assessed in each year since 1878, up to and including the year 1891, by the board of equalization, as provided in said act, or by the

railroad commissioner, as provided for in subsequent acts of the General Assembly.

Since the charter of the city of Louisville was amended so as to require property other than railroad property in the city of Louisville to be assessed as of the first day of September of each year, and providing that the general council should in each year, in the month of December, by ordinance, levy an ad valorem tax upon property in the city, the amounts of taxes upon the property in the city of Louisville of railroad companies under assessments made in each year as of July 1st have been fixed according to the rates of taxation prescribed by the levy ordinances of the city of
6 Louisville passed in the December proceeding the day as of which the assessment was made, whereas other property in said city, under assessments made as of September 1st in each year, has been taxed according to the rate fixed by levy ordinances of the city of Louisville passed in the month of December succeeding the day as of which the assessment was made; and thus it is that the tax paid by the Louisville & Nashville Railroad Company on February 6th, 1892, and which is now in controversy herein, and which was based on the assessment made as of July 1st, 1891, was fixed in amount by the rate of taxation which was fixed by the levy ordinance passed by the city of Louisville in December, 1890.

A letter from D. F. Murphy, assessor of the city of Louisville, to the Hon. Lafe. Joseph, assistant city attorney of the city of Louisville, is herewith filed as part hereof, marked Exhibit F, and it is agreed that the facts stated in said letter are true; but it is further agreed that the following statements in said letter, to wit, "and the tax bills paid February 6th, 1892, were for taxes due for the fiscal year of 1891," is simply a legal conclusion of the said assessor drawn from the facts heretofore agreed upon herein and from his construction of the laws governing the subject in controversy; and it is further agreed that the rates of taxation stated in said letter for the several years succeeding the year in which the charter of the city of Louisville was amended so as to require the levy ordi-
7 nances to be passed in December are rates which were fixed in the month of December preceeding the year for which the rate is given in the letter; thus the letter states that the rate of taxation for 1890 was $1.98; but this rate of taxation was fixed by a levy ordinance passed in December, 1889.

The auditor of public accounts of the State has always treated the assessments of railroads, based on their reports made as of July 1st of each year, as assessments for the ensuing year, as is shown by a letter from the present auditor, addressed to J. P. Helm, Esq., filed herewith as a part hereof, marked Exhibit G.

Question.

Upon the foregoing facts, was the Louisville & Nashville Railroad Company entitled to a discount—and, if so, then to what discount—upon the tax bills mentioned herein on February 4th, 1892, when it offered to pay said bills less a discount, or on February 6th, 1892, when it paid the amount of said bills under protest?

If the court shall be of the opinion that the railroad company at the time of the said tender or payment was entitled to a discount upon the amount of said tax bills, then judgment may be entered for the amount of such discount, with interest from Feb'y 6, 1892, until paid, in favor of the Louisville & Nashville Railroad Company against the city of Louisville for the amount of such discount and the costs of this proceeding; but if the court shall be of the
8 opinion that said railroad company was not entitled to any discount on said bills on said day of tender or payment, then judgment may be entered dismissing the case and giving judgment for costs of this proceeding in favor of the city of Louisville against the Louisville & Nashville Railroad Company. The right of appeal from the judgment of the Louisville chancery court is not waived.

LAF. JOSEPH,
Att'ys for City of Louisville.
HELM & BRUCE,
Att'ys for Louisville & Nashville Railroad Company.

Henry S. Tyler says he is mayor of the city of Louisville, and Milton H. Smith says he is the president of the Louisville & Nashville Railroad Company, and both of said parties say that the controversy appearing from the facts and questions stated above is real, and that the proceedings in making an agreed case upon said controversy are in good faith to determine the rights of the parties thereto.

HENRY S. TYLER.

Subscribed and sworn to by H. S. Tyler before me this the 18th day of April, 1892.

J. M. TERRY,
N. P., J. C.

M. H. SMITH.

Subscribed and sworn to before me by M. H. Smith this 19th day of April, 1892.

WALKER D. HINES,
N. P., J. C.

9 At a court held for the court aforesaid on the 22nd day of April, 1892.

Came The Louisville & Nashville Railroad Company, by Helm & Bruce, counsel, and came The City of Louisville, by Laf. Joseph, its counsel, and on motion of both of said parties it is ordered that the filing of an agreed case between the said parties in the clerk's office of this court on this day be and it is noted of record, and that hereafter the Louisville & Nashville Railroad Company be designated as defendant herein.

And it is further ordered that said case be set for argument for the 18th day of May, 1892.

At a court held for the court aforesaid on the 18th day of May, 1892.

Came parties hereto by counsel and filed Exhibits A, B, C, D, E, F, G, "voucher," "statement," and "agreement," referred to in the agreed case herein.

This action, having been heard, is submitted, and the court, not being advised, takes time.

Said exhibits filed in the foregoing order are in the words and figures as follows, to wit:

Ex. A.

Statement of Assessment of Railroads in Jefferson County and Incorporated Towns of Same for 1891 *as Returned to Auditor by Board of Equalization of Railroads.*

10 Chesapeake, Ohio & S. W. R. R. Co.

	Jefferson county:		
	19 miles 165 feet at $15,000	$285,468	
	Other property	61,400	
			$346,868
	Louisville:		
	3,815 feet at $15,000	10,837	
70,393	Other property	61,000	
			71,837

Pittsburgh, Cincinnati, Chicago & St. Louis R. R. Co.

	Jefferson county:		
18,700	3.96 miles at $5,000	19,800	
44,760	Other property	43,500	
			63,300
	Louisville:		
	3.96 miles at $5,000	19,800	
	Other property	43,500	
			63,300

Jefferson county.

L. & N. R. R. Co.

Louisville, Harrods Creek & Westport R. R. Co.

	Jefferson county:		
	11.36 miles at $3,000	.....	34,080
	Louisville:		
5,610	1.87 miles at $3,000	.....	5,610

L. & N. R. R. Co.

Louisville Railway Transfer Co.

	Jefferson county:		
	4.13 miles at $60,000	247,800	247,800
11	Louisville:		
143,360	2.56 miles at $60,000	153,600	153,600
	Other property assessed to main stem L. & N. R. R. Co.		

L. & N. R. R. Co., Cincinnati division.

	Jefferson county:		
	15.92 miles at $32,000.....	509,440	
	Other property.....	3,655	
			513,095
	Louisville:		
77,760	2.43 miles at $32,000	.....	77,760
	Other property assessed to main stem.		
	Anchorage:		
	.86 mile at $32,000	27,520	
	Jefferson county.		

Ohio & Mississippi R'y Co.

	Jefferson county:		
	2.98 miles at $3,000.....	8,940	
	Other property.....	83,000	
			91,940
	Louisville:		
2,310	.74 mile at $3,000.....	2,220	
80,000	Other property	78,000	
			80,220

Shelby R. R. Co.

	Jefferson county:		
	7.30 miles at $7,000.....	51,100	
12	Other property.....	5,275	
			56,375
	City of Louisville:		
5,000	Other property.....		

Short Route R'y Transfer Co.

	Jefferson county:		
80,000	1.52 mile at $80,000...	.....	121,600

Louisville:

1.52 mile at $80,000		121,600

Jefferson Co.

Louisville, New Albany & Chicago R. R. Co.

Jefferson county:

3,789 feet	3,000	
Other property	29,000	
		32,000

Louisville:

3,000 3,789 feet	3,000	
29,000 Other property	29,000	
		32,000

L. & N. R. R. Co.—main stem.

Jefferson county:

11.48 miles at $37,500	430,500	
Other property	708,000	
		1,138,500

Louisville:

1.82 mile at 37,500	$68,250	
478,530 Other property	683,530	
		751,780

NOTE.—This includes $100,000, value of machinery not taxed for city purposes; also "other property" of Cincinnati division, Louisville, Harrods Creek & Westport and Louisville & Nashville Transfer.

13

Jefferson county.

Kentucky & Indiana Bridge Company.

Jefferson county:

3.42 miles at $30,000	102,600	
5.40 " at 20,000	108,000	
Other property	14,000	
		224,600

City of Louisville:

45,000 1.50 mile double track at 30,000	$45,000	
10,606 .50 " single " 20,000	20,000	
		55,000

Louisville Bridge Company.

Jefferson county:

1.80 mile.		
.89 mile double track at $60,000	$53,400	
.91 " single " at 50,000	43,500	
		98,900

Louisville:

	1.80 mile.					
	.89	"	double track at	$60,000...	$53,400	
75,000	.91	"	single " at	50,000...	45,500	
						98,900

A copy.

Attest:

JNO. M. RAMSAY,
Deputy Clerk Jeff. Co. Court, Ky.

Tax Bill for 1891 (*under Assessment Made as of September* 1, 1890). No. 17076.

Louisville & Nashville R. R. Co., main stem, to the City of Louisville, Dr., for city taxes on the following property:

Taxes for current year on each one hundred dollars' worth of lands, improvements, and personalty.	
City purposes	$0 85
Schools	33½
Railroad (E. & P. and L., N., A. & St. L.)	13
Sinking fund	25
House of Refuge (industrial school of reform)	4
Sewer cleaning and repairing	2
Street cleaning & repairing, including footways, &c.	29
Bonds under ordinance and vote of 1883	4
Reconstruction of carriageways, streets, and alleys, &c.	21½
Total	$2 17
On investments:	
Schools, .33½; railroads, .13; bonds of 1883, 4; total	0 52½
Head tax on each resident male over 21 years of age	2 00

Discount.—If paid during January or the first ten working days of February, 3 per cent.; the rest of February, 2 per cent.; during March, 1 per cent.

Interest.—If not paid on or before May 1, 1895, interest at the rate of ½ per cent. for every month or fraction of a month will be added.

	Lot.	Block.	Price p'r mile.	
1.82 miles of track			37,500	$68,250
Other property				583,530
Improvements				
Personal property				
Total				$651,780
To tax on $651,780, lands, imps., and personal prop., @ $2.17 per $100				$14,143 63
Head tax				
Total				$14,143 63
Discount (or interest and cost)				
Total				$14,143 63

Received payment,

[Seal City of Louisville, Kentucky.]

J. J. SHELLEY,
Receiver of City Taxes.

[Written across the face in red ink:] Original tax bill for the fiscal year ending Aug. 31st, 1891. D. F. Murphy, assessor. 19,285.88.

"Ex. C."

Tax Bill for 1891 (*under Assessment Made as of September* 1, 1890). No. 17077.

Louisville & Nashville R. R. Co., Cincinnati division, to the City of Louisville, Dr., for city taxes on the following property:

Taxes for current year on each one hundred dollars' worth of lands, improvements, and personalty.	
City purposes	$0 85
Schools	33½
Railroad (E. & P. and L., N., A. & St. L.)	13
Sinking fund	25
House of Refuge (industrial school of reform)	4
Sewer cleaning and repairing	2
Street cleaning and repairing, including footways, &c	29
Bonds under ordinance and vote of 1883	4
Reconstruction of carriageways, streets, and alleys, &c	21½
Total	$2 17
On investments:	
Schools, .33½; railroads, .13; bonds of 1883, 4; total	0 50½
Head tax on each resident male over 21 years of age	2 00

Discount.—If paid during January or the first ten working days of February, 3 per cent.; the rest of February, 2 per cent.; during March, 1 per cent.

Interest.—If not paid on or before May 1, 1895, interest at the rate of ½ per cent. for every month or fraction of a month will be added.

	Lot.	Block.	Price p'r *foot.*	
2.43 miles of track			32,000	$77,760
Improvements				
Personal property				
Total				$77,760
To tax on $77,760, lands, imps., and personal prop., @ $2.17 per $100				$1,687 39
Head tax				
Total				$1,687 39
Discount (or interest and cost)				
Total				$1,687 39

Received payment,

[Seal City of Louisville, Kentucky.]

J. J. SHELLEY,
Receiver of City Taxes.

[Written across the face in red ink:] Original tax bill for the fiscal year ending Aug. 31st, 1891. D. F. Murphy, assessor.

THE CITY OF LOUISVILLE.

11

Tax Bill for 1891 (*under Assessment Made as of September* 1, 1890). No. 17078.

Louisville & Nashville Co., L. & N. Transfer Co., to the City of Louisville, Dr., for city taxes on the following property:

Taxes for current year on each one hundred dollars' worth of lands, improvements, and personalty.	
City purposes	$0 85
Schools	33½
Railroad (E. & P. and L., N., A. & St. L.)	13
Sinking fund	25
House of Refuge (industrial school of reform)	4
Sewer cleaning and repairing	2
Street cleaning and repairing, including footways, &c.	29
Bonds under ordinance and vote of 1883	4
Reconstruction of carriageways, streets, & alleys, &c.	21½
Total	$2 17
On investments:	
Schools, .33½; railroads, .13; bonds of 1883, 4; total	0 50½
Head tax on each resident male over 21 years of age	2 00

Discount.—If paid during January or the first ten working days of February, 3 per cent.; the rest of February, 2 per cent.; during March, 1 per cent.

Interest.—If not paid on or before May 1, 1895, interest at the rate of ½ per cent. for every month or fraction of a month will be added.

	Lot.	Block.	Price p'r *foot.*	
2.56 miles of track			60,000	$153,600
Improvements				
Personal property				
Total				$153,600
To tax on $153,600, lands, imps., and personal prop., @ $2.17 per $100				$3,333 12
Head tax				
Total				$3,333 12
Discount (or interest and cost)				
Total				$3,333 12

Received payment,

[Seal City of Louisville, Kentucky.]

J. J. SHELLEY,
Receiver of City Taxes.

[Written across the face in red ink:] Original tax bill for the fiscal year ending Aug. 31st, 1891. D. F. Murphy, assessor.

"Ex. E."

Tax Bill for 1891 (*under Assessment Made as of September* 1, 1890). No. 17079.

Louisville & Nashville R. R. Co., Louisville, Harrods Creek & Westport R. R. Co., to the City of Louisville, Dr., for city taxes on the following property:

Taxes for current year on each one hundred dollars' worth of lands, improvements, and personalty.	
City purposes	$0 85
Schools	33½
Railroad (E. & P. and L., N., A. & St. L.)	13
Sinking fund	25
House of Refuge (industrial school of reform)	4
Sewer cleaning and repairing	2
Street cleaning and repairing, including footways, &c.	29
Bonds under ordinance and vote of 1883	4
Reconstruction of carriageways, streets, & alleys, &c.	21½
Total	$2 17
On investments:	
Schools, .33½; railroads, .13; bonds of 1883, 4; total	0 50½
Head tax on each resident male over 21 years of age	2 00

Discount.—If paid during January or the first ten working days of February, 3 per cent.; the rest of February, 2 per cent.; during March, 1 per cent.

Interest.—If not paid on or before May 1, 1895, interest at the rate of ½ per cent. for every month or fraction of a month will be added.

	Lot.	Block.	Price p'r *foot.*	
1.87 miles of track			3,000	$5,610
Improvements				
Personal property				
Total				$5,610
To tax on $5,610, lands, imps., and personal prop., @ $2.17 per $100				$121 74
Head tax				
Total				$121 74
Discount (or interest and cost)				
Total				$121 74

Received payment,

[Seal City of Louisville, Kentucky.]

J. J. SHELLEY,
Receiver of City Taxes.

[Written across the face in red ink:] Original tax bill for the fiscal year ending Aug. 31st, 1891. D. F. Murphy, assessor.

18 "EXHIBIT F."

Office of the city assessor—D. F. Murphy, assessor.

LOUISVILLE, KY., *Mar.* 3, 1892.

Hon. Lafe Joseph, ass't city att'y.

DEAR SIR: In compliance with your request, I have examined the assessment books on file in this office in reference to the assessments of the L. & N. R. R. Co. for city taxes and find the following facts:

The L. & N. R. R. Co. was assessed by the city assessor, as of the 10th of Jan'y of each year, for city taxes for the current year up to and including 1877, and since said assessment of 1877 the city assessor has never assessed the property of the L. & N. R. R. Co.

The assessment for the year 1878 and that of each year since, including 1891, has been made by the State board of railroad com'rs during the latter part of each year for each current year—that is, in the fall of 1878 for the year of 1878, and in the fall of 1879 for the year of 1879, and so on until the fall of 1891 for the year of 1891, inclusive. The assessment against the L. & N. R. R. Co. is therefore complete up to and including 1891, and the tax bills paid Feb. 6th, 1892, were for taxes due for the fiscal year of 1891. The tax rate fixed by the levy ordinance for 1878 was levied on the as-

19 sessment of 1878 and for each succeeding year on each succeeding assessment down to and including the year of 1891, for which year the tax bills are in controversy. The tax rate for 1891 was levied on that assessment. The tax levy for 1891 happened to be the same as that of 1892, but it is frequently different.

						E. D...	$2 10
For 1878 it was.....			$2 17	For 1879 it was.		$W. D...	2 12
		E. D...	2 15	1881	"	....	2 15
" 1880	"	..W. D...	2 17				
1882		.....	2 35	1883	"	.....	2 10
1884		.....	2 10	1885	"	....	2 48
1886		.....	2 30	1887	"	.....	2 04
1888		.....	2 10	1889	"	.....	2 02
1890		.....	1 98	1891	"	.....	2 17

Very resp't'y,

D. F. MURPHY,
City Assessor.

"EXHIBIT G."

State of Kentucky, office auditor of public accounts.

FRANKFORT, *Feb. 24th*, 1892.

James P. Helm, Esq., att'y-at-law, Louisville, Ky.

DEAR SIR: Your favor 22nd inst. is received. The theory of this office has always been that the taxes on railroads as well as banks on an assessment made July 1st of any year is for the succeeding year; but of course this is not conclusive and has no refer-

20 ence to any legal construction that has been given on the subject by the courts or by any act of the legislature.

As an example in support of our theory, would say that if a bank should be closed on the 30th of June, 1892, we could not collect the tax or require a report on July 1st, 1892, because the bank would not then be in existence; but the funds could be taxed thereafter in whatever form they assumed. Under an opinion of the attorney general the act of 1883–'4, exemp-ing railroads for five years from beginning of construction, a railroad could not be assessed for taxation if the five years expired after the 1st of July of any given year.

I do not know of any law that contemplates the taxation of property for a part of a year, and I therefore assume that if the five years expired after July 1st that the tax would be collected on an assessment made the succeeding July and for the following year and not the previous part of a year.

Yours truly, L. C. NORMAN, *Auditor.*

"EXHIBIT VOUCHER."

Copy.

Kentucky Tax Voucher.

Louisville & Nashville Railroad Co. to J. J. Shelley, tax-receiver, Dr.

For amount of taxes due city of Louisville on assessment,
21 of which the company received notice from auditor on the 26th day of December, 1891, as shown in statement below:

1892.							
Jan. 29.	1.82 miles railroad	(M. S.)	at $37,000	p'r mile	.....	$68,250
	2.43 " "	(C. D.)	" 32,000	"	.....	77,760
	2 56 " "	(R. T.)	" 60,000	"	.....	153,600
	1.87 " "	(L., H. C. & W.)	" 3,000	"	.....	5,610
	Other property.....					583,530
						$888,750
	Rate, $2.17 on one hundred dollars.....					19,285 87

Payment of this sum is made under protest. The Louisville & Nashville Railroad Company contends that it is entitled to the 3 per cent. discount allowed by law.

Nineteen thousand two hundred eighty-five & $\frac{87}{100}$ dollars, 19,285.87.

Chargeable to—

Account.	Division.	Amount.
Taxes.....	M. S.....	12,196 53
	C. D.....	3,591 76
	R. T.....	3,352 10
	L., H. C. & W.....	145 48
Total.....		19,285 87

Approved.

C. O. BRADFORD,
Real-estate Agent.

Correct.
N. R. AYERS.

Approved for payment.

CHAS. HAYDEN,
Ass't Comptroller.

Approved.
H. W. BRUCE,
Ass't Chief Attorney.

Received nineteen thousand two hundred eighty-five and $\frac{87}{100}$ dollars.
Date, Feb'y 6, 1892.

J. J. SHELLEY, *R. C. T.*

Statement.

Statement. (15905.)

Louisville & Nashville R. R. Co. in acc't with the City of Louisville, Dr.

22 DEC. 31, 1891.

To city taxes on the following property:

No. of bill.	Description of property.	Am't of tax, total.
17076	1.82 miles of track, $37,500 p'r mile. 68,250 00 Other property..... 583,530 00	
	651,780 00 at 2.17 p'r 100.00 Main stem.	14,143 63
7	2.43 miles of track, $32,000 p'r mile, 77,760, at 2.17 p'r 100.00 Cin. division.	1,687 39
8	2.56 miles of track, $60,000 p'r mile, 153,600, at 2.17 " " L. &. N. Trans. Co. Am't of tax, total.	3,333 12
9	1.87 miles of track, $3,000 p'r mile, 5,610, at 2.17 p'r 100.00.... Lou., Harrods Cr. & Westport R. R. branch.	121 74
		$19,285 88

Yours T., J. J. SHELLEY, *Rec. L.*

"Agreement."

This writing executed this — day of February, 1892, between the city of Louisville and the Louisville & Nashville Railroad Company,

Witnesseth, that the said railroad company has this day paid to the city of Louisville $19,285.87 for taxes upon its property subject to taxation by the city of Louisville based upon a return made by said company as of the 1st day of July, 1891, as required by section 1, article 3 of chapter 92 of an act approved May 17th, 1886, com-

monly known as the "Hewitt bill" and as chapter 92 of the General Statutes, and as assessed pursuant to section 3 of said article
23 3 and chapter 92, which the auditor of public accounts certified to said railroad company pursuant to section 4 of said article and chapter, in a communication dated the 25th day of December, 1891, which was received by said company on the 26th day of December, 1891.

And this writing further witnesses that before making such payment the said railroad company insisted that it had a right to a discount of three per cent. upon the aforesaid sum, which discount amounted to $578.58, and that there was only due from it to the city of Louisville $18,707.30; and that said railroad company on the 4th day of February, 1892, tendered and offered to pay to the said city the last-named sum; but the said city refused to receive said last-named sum or any sum less than the sum first mentioned, to wit, $19,285.87 and demanded the payment of said sum of $19,285.87, whereupon the said railroad company agreed with said city to pay and paid the said sum of $19,285.87 under protest, and with the understanding and agreement between it and said city that an agreed case should be made and submitted to the Louisville chancery court for the purpose of determining the question of whether or not the said railroad company is entitled to said discount or any discount upon the taxes paid by it, and if so, then to how much discount it is entitled; and that the judgment to be rendered by said court should be subject to appeal as provided in the code of practice; and that if it should be finally adjudged by said Louisville chancery court or any court to which said case should
24 be finally carried, that the said railroad company was at the time of its said payment entitled to a discount upon said payment then the said city would refund and pay back to said railroad company the amount of such discount, with interest from this date.

Witness the signatures of the parties this date first above mentioned.

CITY OF LOUISVILLE,
By HENRY S. TYLER, *Mayor.*
HENRY S. BARKER, *City Att'y.*
LAF. JOSEPH, *Ass't City Att'y.*
THE LOUISVILLE & NASHVILLE RAILROAD CO.,
By H. W. BRUCE, *Ass't Chief Att'y.*

At a Court Held for the Court Aforesaid on the 20th Day of June, 1892.

This agreed case having been submitted in chief, and the court being sufficiently advised, delivered a written opinion, which is now filed, and in accordance therewith it is considered by the court that plaintiff, The Louisville & Nashville Railroad Company, had no right to any discount on its tax bill when it paid or tendered payment of same, as shown in said agreed case, and that this said — be,

and it is therefore, dismissed, and that defendant recover of plaintiff its costs herein expended.

To the foregoing judgment plaintiff excepts and prays an
25 appeal therefrom to the superior court of Kentucky, which is granted.

Said opinion is in the words and figures as follows, to wit:

Louisville Chancery Court.

L. & N. R. R. Co., Plaintiff,
vs.
THE CITY OF LOUISVILLE, Defendant.

This agreed case raises the question for the first time whether the plaintiff is entitled to the deduction for prompt payment of taxes, and, if any, how much. The court was at the argument inclined to allow plaintiff's contention, but examination has changed the views of the court.

Corporations are purely creatures of the State. They have such such rights and carry such burdens as the State sees fit to confer or impose, subject to the fundamental law. Mining Co. *vs.* New York, 143 U. S., 313. The property of a railroad company is charged with public duty, and therefore subject to the police power of the State. Their lines of road are highways, and — may have doubted the usefulness of taxing them, for the public that imposes the taxes must ultimately pay them; but the law recognizes private ownership in these highways of money value, and the State has from time to time imposed taxes thereon—at first in favor of the State alone. Ernst *vs.* Applegate, 3 Bush., 648; Marion County *vs.* L. & N. R. R. Co., 89 Ky., 139, and cases there cited.

26 The general statutes imposes taxes on different corporations by different processes—as, for instance, banks, railroads, turnpikes, gas and water companies, telegraph and telephone company, and express companies—and each in a mode peculiar to itself. This for State taxes alone, which are assessed in methods peculiar to each.

The methods prescribed for one cannot be applied to another. Marion County *vs.* L. & N. R. R. Co., 89 Ky., 139.

Railroads and banks were at one time, and the latter are still, taxed arbitrarily—railroad at so much per mile and banks at so much per share of *its* capital stock.

Until quite recently county and municipal taxes could not be collected of railroad companies. 89 Ky., 139.

Railroad companies claimed and secured exemption from the payment of county taxes on the ground that the statutory machinery provided for collecting such did not embrace them.

The claim here in behalf of the city is that the machinery providing for the collection of city taxes generally does not include taxes from such companies.

This brings us to consider the proper construction of the act of the legislature entitled "An act to revise and amend the tax laws

of the city of Louisville," approved May 12, 1884, commonly called the Dembitz law.

Section 1 of article 4 of that act allows deductions of the kind claimed by plaintiff by providing that those "paid in January shall be reduced by a discount of three per cent., and those paid
27 in February by a discount of two per cent., and those paid in March by a discount of one per cent." Does this provision embrace the plaintiff?

The court has carefully examined this act in all its parts. Article 2 relates to assessments for taxation and makes no provision for any assessment of railroad companies or banks. Article 4 provides for the collection of taxes assessed under city authority, but in terms which do not include railroad property, for such is not assessed by city authority. If there was no law but this act, could the city collect taxes from railroad property at all? L. & N. R. R. Co. *vs.* Warren County, 6 Bush., 245; Marion County *vs.* L. & N. R. R. Co., 89 Ky., 138.

Then we must look elsewhere for authority in the city to tax railroad property within its limits. This is found in section- 3, 4, and 5 of article 3, chapter 92, of the General Statutes. These sections provide for the assessment of such property for taxation by State authority for State, county, city, and town purposes, provides for payment of taxes under penalties on its chief officer, and requires the payment of such taxes by a named day (said to be an impossible day), but nowhere in terms or by implication provides for any deduction for prompt payment of State, city, or town taxes. Section five, above referred to, forbids assessments or collection of taxes in any mode other than that provided for in that article. There is no provision for deductions for prompt payment in the article. The tax-receiver must collect according to that article and not otherwise. Can he take less than the whole bill? Not
28 by form of the Dembitz law, for it has no application, and he is expressly forbidden to act under that law, as above pointed out. Such a deduction is *pro tanto* in the nature of an exemption, and exemptions are not allowed except in clear case of express authority affirmatively appearing. No such authority appears.

The ground of inequality in taxation, so much relied upon by plaintiff's counsel, is not entitled to much weight, for the principle, if such there be, is misapplied. Taxes are imposed in this State, as to corporations, by classes. No member of a class can complain if he is treated like all in the same class. If it be wrong not to allow deductions to banks, railroad companies, gas companies, &c., for prompt payment of taxes, then the legislature can remedy the wrong. In the present condition of the statutes, the courts cannot. Let the plaintiff's claim be denied in a proper judgment, submitted for approval.

I. W. EDWARDS, *Chancellor.*

At a Court Held for the Court Aforesaid on the 6th Day of July, 1892.

By consent of plaintiff and defendant, and to correct certain mistakes in the record herein, it is hereby ordered, as of April 22, 1892, that The Louisville and Nashville Railroad Company be designated as plaintiff and The City of Louisville as defendant herein.

29 It is further ordered, by consent of said parties, that the judgment herein be corrected by inserting therein the word action immediately before the words be and it is there- dismissed.

COMMONWEALTH OF KENTUCKY:

Louisville Chancery Court.

I, John H. Weller, clerk of the aforesaid court, do hereby certify that the foregoing 26 pages contain a full, true, and complete transcript of the record and proceedings had in said court, wherein The Louisville & Nashville Railroad Company is plaintiff and The City of Louisville is defendant, #45541, as the same appears of record and on file in my said office.

Witness my hand this 28th day of June, 1892.

JNO. H. WELLER,
Cl'k Lou. Ch'y Ct.

Transcript fee, $7.80.

30 On the filing of the foregoing transcript the appellant made the following statement:

Superior Court of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CITY OF LOUISVILLE, Appellee. } Statement.

The judgment appealed from herein was rendered on June 20, 1892, and is found on page 22 of this record.

No summons or warning order is desired.

HELM & BRUCE,
Att'ys for Appellant.

Afterwards, at a superior court held in and for the Commonwealth of Kentucky, at the capitol, in the city of Frankfort, on the 15th day of February, A. D. 1893, the following order was entered:

Argument & Submission.

LOUISVILLE & NASHVILLE R. R. Co.
vs.
CITY OF LOUISVILLE. } Louisville Chancery Court.

This cause, coming on to be heard, was argued by Laf. Joseph for appellee and Helm & Bruce for appellant and submitted.

And afterwards, at a superior court held, as aforesaid, on the 1st day of March, A. D. 1893, the following orders and judgments were entered:

31 *Judgment.*

LOUISVILLE & NASHVILLE RAILROAD Co., Appellant, *vs.* CITY OF LOUISVILLE, Appellee.	Appealed from a Judgment of Louisville Chancery Court.

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered to be certified to said court.

It is further considered that appellee recover of appellant its cost expended herein.

On the same day the following opinion was delivered:

LOUISVILLE & NASHVILLE RAILROAD Co., Appellant, *vs.* CITY OF LOUISVILLE, Appellee.	Appeal from the Louisville Chancery Court.

The charter of the city of Louisville (we so call the act amending the tax laws of the city for the sake of brevity) provides that the taxes assessed by its assessor shall be payable on the 3d of January of each year, and to that end the assessor is required to list the tax bills with the receiver of city taxes by that day or as soon thereafter as practicable, and all taxes paid in January or the first ten working days of February shall be reduced by a discount of 3 per cent., those paid in the rest of February by 2 per cent., and those paid in March by 1 per cent. The property of the appellant, The
32 Louisville & Nashville Railroad Company, as well as that of all other railroads in the city of Louisville, is assessed for taxation under the provisions of article 3, chapter 92, General Statutes.

The question presented is whether the appellant by paying its taxes for 1891 within the period allowed by the charter to those paying their taxes for 1892 is entitled to the discount allowed to the latter.

By the general law applicable to all railroads the railroad commissioners assess the property of all railroads in the State as of the 1st of July, and the taxes of the State—the different counties, cities, & towns—upon the basis of this assessment, are required to be paid on the 10th of October in each year; and, if not paid, the president of the delinquent company is subject to a fine recoverable by indictment in the Franklin circuit court, and the taxes in behalf of the Commonwealth may be recovered by action in that court, and those in behalf of the counties by action in courts of competent jurisdiction in the respective counties. "The same rate of taxation for the

purpose of each city * * * in which any portion of any railroad is located, which is or may be in any year levied on other real estate therein, shall be, and is hereby, levied on the value of the real estate of said company therein, and of the number of miles of such road therein, reckoned as of the value of the average value of each mile of such road, with its rolling stock, as ascertained as aforesaid; * * * and all existing laws authorizing the assess-
33 ment and taxation of the property of railroad companies by * * * cities, * * * are hereby repealed; and no city * * * shall hereafter assess, levy, or collect any taxes on the property of railroad companies in this State, except as provided by this article." For the year 1891 the railroad commission assessed appellant's property for State, county, and city taxes as of the 1st of July, 1891. The notice of this assessment, which the statute required should be given to the appellant, was, on account of some delay at Frankfort, not given until in December. Since the charter of the city was so amended as to require property other than railroad property in the city to be assessed as of the 1st of September of each year, and provided that the general council should, in each year, in the month of December, by ordinance, levy an ad valorem tax upon the property in the city, the amount of taxes upon the property in the city of railroads, under assessments made in each year of July 1st, have been fixed according to the rates of taxation prescribed by the levy ordinances passed in the December preceding the day as of which the assessment was made, whereas other property in the city under assessments made as of September 1st in each year has been taxed according to the rate fixed by levy ordinances passed in the month of December succeeding the day of which the assessment was made, and thus it is that the tax paid by the appellant on February 6th, 1892, and which is now in controversy, and which was based on the assessment made as of July 1st, 1891, was
34 fixed in amount by the rate of taxation which was fixed by the levy ordinance passed by the city in December, 1890. The taxes therefore paid by the appellant were the taxes due by it for the year 1891, and it is now claiming that because it paid these taxes to the city on the 6th of February, 1892, it is entitled to the discount allowed other tax-payers who at the same time paid their taxes for the year 1892, which taxes were levied by the levy ordinance in December, 1891, one year after the taxes paid by the appellant was levied.

It is not claimed that the provision of the charter allowing a discount to tax-payers for prompt payment is in itself invalid, but it is argued that unless it is so construed as to allow railroad companies the same discount, the discrimination will render it invalid as to such companies. As to this, we think it sufficient to say that no constitutional question is involved. It is simply a matter of construction.

The necessities of the case, the character of property owned by railroad companies, the injustice which would be done them by subjecting them to fragmentary assessments by each county or municipality through which their roads should run, require that

their property should be assessed upon a different basis and in a manner different from that in which other property is assessed.

Each municipality, for obvious reasons, may require that in the assessment of property generally for taxation it should be valued as of a time different, and that the taxes should be paid at a different time than that fixed by other municipalities, but a railroad
35 company whose property is in its own interest treated as a unit, though it runs through a number of towns and cities, should not be subjected to the changes occasioned by these different conditions. They should not be required to assess their property in one town upon its value as of one date and in another town as of another date, and to pay in one town at one time and in another town at another time. If they were, they could well complain of the confusion and uncertainty and the consequent trouble and expense in which they would be continually involved. The provision allowing discounts to citizens paying the assessments made by the city does not, as counsel argues, fix different rates of taxation. It is but a means of collection. By the citizen's prompt payment, without waiting for the tax-gatherer to call upon him, the city saves much of the expense it would otherwise incur in the efforts to collect through the services of a collecting officer; and we doubt not but that experience has demonstrated that the city, by reasons of these provisions, realizes much more than it could possibly realize without them; but be that as it may, it still works no substantial loss to the railroad companies. The taxes collected of property which the city assesses in accordance with the provisions of its charter are based upon a valuation of the property on the 1st of September preceding the levy of the tax, and this tax is due to the city on the 3d of January following, and if not paid by the 1st of May, bear interest at the rate of ½ per cent. per month. In
36 the very nature of the case, the taxes upon railroad property for the same year are not due until October the 10th, more than nine months after the taxes of other citizens are due and more than five months after the period at which they begin to bear interest. As it happens in this instance, the appellant's taxes were not due, on account of the delay of the auditor in transmitting the notice to it, until some time in December, a delay of which the appellant cannot complain.

Is there, then, any justice or equity in the claim of the appellant that it should, upon the payment of the taxes which it owed for the year 1891, at the time other citizens were paying their taxes for the coming year of 1892, be allowed the discount on its 1891 taxes that were allowed to other citizens for the prompt payment of their taxes for the current year of 1892? Is not the difference in the time in which the taxes become due or are required to be paid a sufficient compensation for the loss of the discount?

The inconsistency of the appellant's contention is further demonstrated when we consider the fact that it is not frequently the case that the taxes levied by the city are the same for two successive years. Suppose that the taxes levied for 1891 had been $1.50 on each $100 worth of property, and in 1892 *it* had been $2.50, should

the appellant, by paying in February, 1892, its per cent. of $1.50, the taxes of 1891, be allowed the same discount which other tax-payers could only obtain by paying at the same time $2.50, their taxes for the ensuing year of 1892?

The city charter provides for the assessment of property
37 other than that owned by railroads (which are expressly exempted from its operation) by its assessor. Neither the assessor nor the board of equalization provided by the charter have any voice in the valuation of railroad property. The assessment of the railroad commission is conclusive. The penalty imposed by the charter or delinquent tax-payers has no application to railroads. The mode of collecting the taxes assessed by the city and those assessed by the railroad commission are not alike. The charter offers to the tax-payer who promptly pays the taxes assessed by it against him a discount, and we can see no reason why the railroads should by construction be held to be embraced by its provisions. In fact, the charter instead of embracing them seems to us by its terms to exclude them, and the exclusion works no wrong to them. To allow the appellant the discount under the circumstances claimed here would be to favor it above other tax-payers, and as this was the conclusion of the chancellor who denied to the appellants the relief it sought, his judgment is affirmed.

Afterwards, on March the 8th, A. D. 1893, at a court held as aforesaid, the following orders were entered, to wit:

Louisville Chancery —.

LOUISVILLE & NASHVILLE RAILROAD CO.
vs.
CITY OF LOUISVILLE.

Came the appellant, by counsel, and filed grounds and moved the court to set aside the submission and judgment and transfer this case to the court of appeals or to grant an appeal to the court of appeals; which motions are submitted.

38 The following are the grounds of the foregoing motion:

Superior Court of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CITY OF LOUISVILLE, Appellee.
} Motion.

This day came appellant, by counsel, and stated to the court that it believes the statutes involved in this action, as to the taxation of railroad property in the city of Louisville, as construed by the court in its opinion lately delivered herein, to be invalid and to be in violation of the constitutions of the State of Kentucky and of the United States, and that it desired to be heard on the question of the validity of said statutes, and thereupon moved the court to set aside its judg-

ment and the order of submission herein and to transfer this action to the court of appeals; and came defendant further, by counsel, and moved the court to grant it an appeal from its judgment herein to the court of appeals in the event the court should overrule the preceding motions above set forth.

HELM & BRUCE,
Att'ys for Appellant.

Afterwards, on March 22, 1893, the following order was entered, to wit:

39 Louisville Chancery Court.

LOUISVILLE & NASHVILLE RAILROAD CO.
vs.
CITY OF LOUISVILLE.

The court being sufficiently advised, it is considered that the motion to set aside the submission and judgment and transfer this cause to the court of appeals be overruled.

And on March 29, 1893, the following order was entered herein:

The court being sufficiently advised, the motion for an appeal herein to the court of appeals is sustained. An appeal is therefore granted to the court of appeals and so certified.

Afterwards, at a court of appeals held in and for the Commonwealth of Kentucky, at the capitol, in the city of Frankfort, on the 16th day of January, A. D. 1894, the following order was entered:

LOUISVILLE & NASHVILLE RAILROAD CO., Appellant, *vs.* CITY OF LOUISVILLE, Appellee. } Appeal from the Louisville Chancery Court.

This cause, coming on to be heard, was argued by Laf. Joseph for appellee and submitted.

Afterwards, at a court of appeals held, as aforesaid, on the 5th day of March, A. D. 1895, the following judgment was entered:

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant, *vs.* CITY OF LOUISVILLE, Appellee. } Appeal from the Louisville Chancery Court.

40

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered to be certified to said court.

It is further considered that appellee recover of appellant its cost expended herein.

At the same time the court of appeals, through Chief Justice Prior, delivered the following opinion:

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CITY OF LOUISVILLE, Appellee.
} Appeal from the Louisville Chancery Court.

The appellant, The Louisville & Nashville Railroad Company, claims it is entitled to a discount upon its tax bills due the city of Louisville by reason of an act of the legislature revising and amending the tax laws of the city by which, when the tax bills are listed for collection with the receiver of city taxes, a discount of 3 per cent. is allowed the tax-payer who pays his taxes in January or the first ten days in February next succeeding the assessment, and a less per cent. if paid after that time, if paid within the month of March, but not later.

This system of assessment, the levy and collection of taxes
41 applicable to the city, — is contended, applies to the property of railroad companies whose property is within the city and subject to municipal taxes. The assessments are made in September of one year for the succeeding year; for instance, in the month of September, 1890, the assessments are made, levied in December, 1890, and the taxes collected in the ensuing year, 1891, and if paid in January, February, and March are subject to the discounts mentioned in the act. The only object in making the discount, as we must assume, is to have the taxes promptly paid, in order to meet the municipal expenses for the year, in which payment can be coerced.

The property of railroad corporations within the city is not assessed by any officer of the municipal government or any levy made by an officer of the city to coerce payment.

Under the title of revenue and taxation, General Statutes, 1042, this property is assessed by railroad commissioners, and the tax imposed is at the same rate of taxation as that levied on real estate by the city for municipal purposes. The assessed value of the corporate property as fixed by the commissioners is reported to the county clerk, and from this report the assessor of the city ascertains the value and applies the rate of taxation as regulated or fixed by the city on the real estate within its boundary. The taxes due by railroads are payable in the month of October and are assessed in the month of July preceding. If not paid, the president of the company may be indicted for its delinquency and the taxes recovered by actions in courts of competent jurisdiction in the respective counties.

42 All laws permitting the cities, towns, etc., to assess the property of railroads were repealed and what is known as the Hewitt laws substituted.

As the law stood prior to the date at which all control was taken from cities, towns, and districts, over the assessment of railroad property there was no regularity as to the time in which such local taxes were to be paid or the assessment made, and besides, with these local divisions intrusted with the power to fix values on the property of such corporations, its exercise was liable to abuse, and

hence the system of taxing this corporate property was changed, both as to the time and mode of assessment and the time of payment, as well as the remedy for enforcing the payment. To secure prompt payment, penalties were annexed not only against the corporation, but its president was subject to indictment when failure to pay at the date fixed by the statute or after notice of the assessment had been given.

The same rate of taxation is imposed on the citizen that is required to be paid by the railroad company. The city, under its charter, adopts one mode of collecting taxes from the citizen, and the State adopts another mode of enabling the city to collect of the corporation. The system of levy, collection, and procedure are entirely different the one from the other and resulting to the benefit of the corporation.

The city is not allowed to fix any value on appellant's property.

43 The penalty on those failing to pay taxes to the city is not made to apply to the appellant, and it is plain, we think, that the charter provision or the law in regard to the assessment, collection, and payment of the taxes of the citizen within the municipality does not include railroads or such corporate property, and equally apparent that the legislature, in regard to these corporations, can enact a different system or mode of assessment and collection from that under which taxes are ordinarily collected, and the discount allowed the citizen to encourage the prompt payment of taxes is not a discrimination in his favor as against appellant, nor is it open to constitutional objection.

Judgment affirmed. Kentucky Railroad Tax cases, 115 U. S.

Afterwards, on the 29th day of March, A. D. 1895, the appellant, by counsel, filed in the office of the clerk of said court its writ of error, which is as follows:

44 UNITED STATES OF AMERICA, } ss:
District of Kentucky, Sixth Judicial Circuit, }

The President of the United States to the honorable the judges of the court of appeals — Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between the Louisville & Nashville Railroad Company, appellant, and City of Louisville, appellee, wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said appellant, as by its complaint appears *as by — complaint appears*, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly

and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date of this writ, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of March, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States of America the one hundred and nineteenth.

Seal 6th Circuit Court, Ky. Dis., U. S. of America.

THOS. SPEED,
Clerk of the Circuit Court of the United States for the District of Kentucky,
By HENRY F. CASSIN,
Deputy Clerk.

Allowed by—
WILL. S. PRYOR,
Chief Justice Court Appeals.

[Endorsed:] 1895, March 29, filed.

45 On the same day the appellant filed its bond in said clerk's office, which is in words and figures following, to wit:

Circuit Court of the United States, District of Kentucky.

Know all men by these presents that we, Louisville & Nashville Railroad Company and Helm — Bruce are held and firmly bound unto City of Louisville in the sum of five hundred dollars, to be paid to the said City of Louisville; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this — day of March, A. D. 1895.

Whereas the above-named Louisville & Nashville Railroad Company hath prosecuted a writ of error from the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the court of appeals of Kentucky:

Now, therefore, the condition of this obligation is such that if the above-named Louisville & Nashville Railroad Company shall prosecute said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

46 LOUISVILLE & NASHVILLE RAILROAD COMPANY. [L. S.]
HELM — BRUCE. [L. S.]

Sealed and delivered in presence of and approved by—
WILL. S. PRYOR,
Chief Justice Ct. Appeals, Ky.

On the 1st day of April the plaintiff in error filed in the clerk's office of said court its assignment of errors as follows:

Supreme Court of United States.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Plaintiff in Error,
vs.
CITY OF LOUISVILLE, Defendant in Error. } Assignment of Errors.

Plaintiff in error, The Louisville & Nashville Railroad Company, assigns as errors in the judgment of the court of appeals of Kentucky in the case wherein Louisville & Nashville Railroad Company was appellant and The City of Louisville was appellee, and to which a writ of error from this court has been brought, the following, viz:

1. The court erred in affirming the judgment of the Louisville chancery court and in not reversing same and ordering a judgment to be entered in favor of Louisville & Nashville Railroad Company against City of Louisville for $578.58, with interest thereon from February 6th, 1892, until paid, and the costs of the action.

47 2. The court erred in holding that under the tax laws governing taxation of property in the city of Louisville, as construed by said court, the same rate of taxation is imposed on the citizen that is required to be paid by the railroad companies.

3. The court erred in holding that the legislature in regard to railroad corporations can enact a different system or mode of assessment and collection from that under which taxes are ordinarily collected, when such difference results, as in this case, under the court's construction of the statutes, in imposing heavier burdens of taxation on one class of citizens than are imposed on all others.

4. The court erred in holding that the allowance of a discount on taxes to the citizens generally and the denial of the same right to railroad companies is not a discrimination in favor of the citizen as against the Louisville & Nashville Railroad Company and other railroad companies and not open to constitutional objection, but is a valid exercise of legislative power, and in holding that the Kentucky Railroad Tax cases, 115 U. S., are authority for such a proposition.

5. The court erred in holding that the Louisville & Nashville Railroad Company was not, when it offered to pay or did pay its taxes to the city of Louisville, as shown by this record, or at any time, entitled to any discount on the face of the tax bill

48 against it, and that the city had the right to enforce collection of the full amount of the tax bill, without allowing such discount as other citizens are allowed under similar circumstances, and to retain the full amount of such collection, although paid under protest.

Wherefore the plaintiff in error, The Louisville & Nashville Railroad Company, prays that the judgment of the court of appeals of Kentucky in the case aforesaid be reversed.

HELM & BRUCE,
Att'ys for Plaintiff in Error.

COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, certify in accordance with the writ of error herein, returned herewith, a copy of which is on file in my office, that the preceding 47 pages contain a true, full, and complete transcript of the record and proceedings had in said court of appeals in the case of Louisville and Nashville Railroad Company, appellant, against The City of Louisville, appellee, on appeal from the Louisville chancery court, together with a copy of the supersedeas bond (the original of which is on file in my office), as appears of record and on file in my said office.

Seal Kentucky Court of Appeals.

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, this 4th day of April, A. D. 1895.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

Fee for this transcript, $17.30.

Endorsed on cover: Case No. 15,867. Kentucky court of appeals. Term No., 261. The Louisville & Nashville Railroad Company, plaintiff in error, *vs.* The City of Louisville. Filed April 13, 1895.

166-709

DEC 3 1890
JAMES H. MCKENNEY
CLERK

166-709

261

SUPREME COURT OF THE UNITED STATES

The Louisville & Nashville Railroad Company . . . . . Plaintiff in Error,

vs.

The City of Louisville . . . . Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

JAMES P. HELM,
HELM BRUCE,
Counsel.

F. C. HUNEMACHER PRESS, LOUISVILLE, KY.

BRITISH

SUPREME COURT OF THE UNITED STATES

LOUISVILLE & NASHVILLE RAILROAD COMPANY . . . . . *Plaintiff in Error,*

vs.

CITY OF LOUISVILLE . . . . . *Defendant in Error.*

STATEMENT.

This is an agreed case between the Louisville and Nashville Railroad Company and the City of Louisville. The terminals of the Louisville & Nashville Railroad Company are in the City of Louisville; where are situated its depots, warehouses, machine shops, storage and transfer yards &c. And the question involved in this case is as to the right of that company to the same abatement or rebate in ascertaining the amount of the taxes which annually become due from it to the City of Louisville on its real estate and other property in that City, which is allowed by law to the owners of all other property in that City. The State Court put such a construction upon the statutes involved as to disallow the rebate; and the railroad company, being compelled of course to accept this as the proper construction of the legislative acts, insists that in so far as they have the effect just stated they are contrary to the constitution of the United States for reasons which will be presently explained.

The Louisville & Nashville Railroad Company is a corporation, created by the State of Kentucky, by an act of the Legislature approved March 5, 1850, (Acts 1849-50, page 427). At that time there was not, nor had there ever been, any general statute reserving to the State the right to alter, amend, or repeal charters or acts of incorporation. No such law was passed in the State until the year 1856. The 18th section of the act of incorporation of plaintiff in error provided, among other things, as follows:

"The said road or roads, with all their works, improvements, or profits, and all the carriages, vehicles and machinery for transportation used therein, and all other species of property thereunto belonging, are hereby vested in said company incorporated by this act and their successors forever; *and shall never be taxed beyond*

the rate of tax imposed upon real estate, estimated upon the prime cost of the proposed works."

The law governing the taxation of railroads at the time to which this controversy relates was embodied in an act approved May 17th, 1886. (1 Acts 1885-86 page 140) which was afterwards embodied in the General Statutes of Kentucky (Edition of 1887 or 1888) as Chapter 92, covering the general subject of "Revenue and Taxation."

So far as the taxation of railroads is concerned it is practically the same as a preceding act approved in April, 1878, which is reported in full in the statement of facts in the Kentucky Railroad Tax Cases, 115 U. S. 322, as modified by the act of April 19th, 1882, which is also referred to in the statement of those cases. So much of the statute as bears upon the present case is as follows:

SECTION. 1. That the president or chief officer of each railroad company or other corporation owning a railroad lying in whole or in part in this State shall, on or before the first day of September in each year, return to the Auditor of Public Accounts of the State, under oath, the total length of such railroad, including the length thereof beyond the limits of the State, and designating its length within this State, and in each county, city and incorporated town therein, together with the average value per mile thereof and the respective counties, cities and incorporated towns therein, together with the average value per mile thereof for the purpose of being operated as a carrier of freight and passengers, including engines and cars, and a list of the depot grounds and improvements, and other real estate of the said company and the value thereof, and the respective counties, cities and incorporated towns in which the same are located. * * * * Said report shall be made as of the first day of July, and a failure to file said report by the first day of September shall subject the president or chief officer residing in this State to a fine of one thousand dollars, and fifty dollars for every day after the first day of September if he fails to file said report, to be recovered as indicated by section 5 of this article."

Section 2 is not material here.

Section 3 provides for the appointment of a Railroad Commission, whose duty it is made to meet on the first day of September, and to examine the returns required, and to correct and equalize the same by a proper increase or decrease in case the valuation should, in the judgment of the Board, be either too high or too low.

As no question is made in this case upon the proceedings of this Board or its valuation of the property, it is not necessary to quote this section in full.

SEC. 4. "The same rate of taxation for State purposes which is or may be in any year levied on other real estate shall be, and the same is hereby, levied upon the value so found by said Board of the railroad, rolling stock, and real estate of each com-

pany, and the same rate of taxation for the purposes of each city, town, county, part of a county or tax district of any kind, in which any portion of any railroad is located, which is, or may be, in any year levied on other real estate therein, shall be, and is hereby, levied on the value of the real estate of said company therein, and of the number of miles of such road therein reckoned as of the value of the average value of each mile of such railroad, with its rolling stock as ascertained as aforesaid. And immediately after the said Board shall have completed its valuation each year, the Auditor of Public Accounts shall notify the clerk of each county court of the amount so assessed for taxation in his county, and each railroad company of the amount of its assessment for taxation for State purposes, and for the purposes of such city, town, county, part of a county and tax district. And all existing laws in this State authorizing the assessment and taxation of the property of railroad companies by counties, cities or incorporated towns, are hereby repealed; and no county, city or incorporated town in this State shall hereafter assess, levy or collect any taxes on the property of railroad companies in this State except as provided in this article.

SEC. 5. "All taxes levied under the provisions of this article shall be paid on or before the tenth day of October in each year; and for a failure to pay the same the president or chief officer residing in this State shall be subject to a fine of fifty dollars for every day that elapses without the payment of the taxes. After the tenth day of October the said fine may be recovered by indictment or civil action in the Franklin Circuit Court, and the taxes in behalf of the Commonwealth may be recovered by action in the Franklin Circuit Court, and those in behalf of the counties by actions in the courts of civil common law jurisdiction in such counties respectively."

It will be observed that this act seems to impose upon property of railroad companies "the *same rate of taxation* for State purposes", and "the *same rate of taxation* for the purposes of each city, town, county, part of a county, or tax district of any kind, in which any portion of any railroad is located," which may be levied in any year on other real estate therein. But the Courts of Kentucky so construe this act as in effect to add a *proviso* that, if any abatement or rebates should be allowed by the laws levying taxes on other real estate for State or municipal purposes, such rebates or abatements should not apply to the property of railroad companies.

By the 7th section of an act approved March 7th, 1890 (1 Acts 1889–90, page 27) the time of meeti
Commissioners is changed from Septe
each year.

Now let us look at the tax laws app
ville.

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As no question is made in this case upon the proceedings of this Board or its valuation of the property, it is not necessary to quote this section in full.

SEC. 4. "The same rate of taxation for State purposes which is or may be in any year levied on other real estate shall be, and the same is hereby, levied upon the value so found by said Board of the railroad, rolling stock, and real estate of each com-

pany, and the same rate of taxation for the purposes of each city, town, county, part of a county or tax district of any kind, in which any portion of any railroad is located, which is, or may be, in any year levied on other real estate therein, shall be, and is hereby, levied on the value of the real estate of said company therein, and of the number of miles of such road therein reckoned as of the value of the average value of each mile of such railroad, with its rolling stock as ascertained as aforesaid. And immediately after the said Board shall have completed its valuation each year, the Auditor of Public Accounts shall notify the clerk of each county court of the amount so assessed for taxation in his county, and each railroad company of the amount of its assessment for taxation for State purposes, and for the purposes of such city, town, county, part of a county and tax district. And all existing laws in this State authorizing the assessment and taxation of the property of railroad companies by counties, cities or incorporated towns, are hereby repealed; and no county, city or incorporated town in this State shall hereafter assess, levy or collect any taxes on the property of railroad companies in this State except as provided in this article.

SEC. 5. "All taxes levied under the provisions of this article shall be paid on or before the tenth day of October in each year; and for a failure to pay the same the president or chief officer residing in this State shall be subject to a fine of fifty dollars for every day that elapses without the payment of the taxes. After the tenth day of October the said fine may be recovered by indictment or civil action in the Franklin Circuit Court, and the taxes in behalf of the Commonwealth may be recovered by action in the Franklin Circuit Court, and those in behalf of the counties by actions in the courts of civil common law jurisdiction in such counties respectively."

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By the 7th section of an act approved March 7th, 1890 (1 Acts 1889–90, page 27) the time of meeting of the Board of Railroad Commissioners is changed from September 1st to October ~~1st~~ first Monday in of each year.

Now let us look at the tax laws applicable to the City of Louisville.

By an act approved May 12th, 1884, entitled "An Act to Revise and Amend the Tax Laws of the City of Louisville" (2 Acts 1883–4, page 1260) it is provided, among other things, as follows:

ARTICLE 1. SECTION 2. "Hereafter the following taxes shall be levied: An *ad valorem* tax on lands and improvements, and on certain kinds of personal property; a license tax on certain trades and occupations, and the use of certain articles; a head tax of $2 a head on all resident males more than 21 years of age. The *ad valorem* and the head tax shall be collected by the receiver of city taxes, who is to hold office, and whose successors shall be elected under existing laws." (P. 1260.)

ART. 1, SEC. 3. "The General Council shall in each calendar year, as nearly in the month of December as practicable, by an ordinance, levy an *ad valorem* tax not exceeding the following rates: For city purposes proper, not more than eigty-five cents on each one hundred dollars." * * * (Here follows the statement, not of different rates of taxation to be imposed upon different kinds of property, but of different rates to be applied to different purposes after the collection of the tax).

ART. 4, SEC. 5. "The aggregate of all taxes named in sections 3 and 4 of this article shall, as of the first day of September in each year, be imposed on lands, such improvements upon land as would, if made by the owner, pass to his heirs as real estate, and upon the following enumerated articles of personal property found as located in said city: All household goods, &c. (P. 1262.)

ART. 2, SEC. 1. "The assessments of real and personal property shall be made by the Assessor, who shall hold office, and whose successors shall be elected under existing laws. * * * But railroads shall be assessed as heretofore under Chapter 764 of the Acts of 1878." (This is the Act which was subsequently re-embodied in substance in the Act of May 17, 1886, heretofore quoted.) (P. 1266.)

ART. 4, SEC. 1. "The Assessor shall, during the month of December in each year, make out the tax bills according to law and the levy ordinances of the city, and shall list such bills for collection with the receiver of city taxes by the third day of January following, or as soon thereafter as practicable; and such taxes shall then be payable at the tax receiver's office; those paid in January shall be reduced by a discount of three per cent, and those paid in February by two per cent, and those paid in March by one per cent." (P. 1274.)

This last section was subsequently amended by the sixth and seventh sections of an Act approved April 20, 1888 (three Acts 1887–8), by striking out certain words and inserting others so as to read as follows:

"The Assessor shall make out the tax bills, and shall list such bills for collection with the Receiver of City Taxes by the third day of January following, or as soon thereafter as practicable; and

such taxes shall then be payable at the Tax Receiver's office; those paid in January, or the first ten working days of February, shall be reduced by a discount of three per cent.; and those paid in the rest of February by two per cent.; and those paid in March by one per cent."

Thus the court will see that according to these tax laws governing the city of Louisville taxes became payable on January third of each year; and while there was a rate fixed nominally for the whole year, yet in substance and effect it was not a uniform rate for the whole year, but on the contrary one rate prevailed for a period of thirty-nine days after the tax became payable; a somewhat higher rate prevailed during the next eighteen days; a still higher rate then prevailed for the next thirty-one days; and finally at the expiration of the last period mentioned, the rate which had been fixed nominally for the whole year, came into effect. A concrete example makes this plainer than the abstract statement. The tax rate for the years 1891 and 1892 was $2.17 on the $100 assessed value of property; but in reality for a period of thirty-nine days after the tax became payable the rate was only $2.10½; for by the payment of such a rate during that period the citizen's entire obligation could be satisfied. Then for the next eighteen days the rate instead of being $2.17 was $2.12½; and for the next thirty-one days the rate instead of being $2.17 was $2.15. Of course the effect of this varying rate in the case of properties of large value was very great. In the case of property of the value of that owned by the Louisville & Nashville Railroad Company in the city of Louisville, the difference between the amount of tax fixed by applying the nominal rate and that fixed by applying the real rate, for the first period mentioned, was over $500 on the valuation of that year. Of course the result of the operation of such a tax statute is very obvious. All owners of large and valuable properties in the city pay their taxes within the first period. The great bulk of the taxes of the city of Louisville are collected during these periods of reduced rates.

On account of the different mode of assessing the property of railroad companies this reduced rate, when the law providing for it went into effect, was not applied to the property of railroad companies, but in February 1892 the Louisville & Nashville Railroad Company, believing that it was entitled to pay the taxes upon its property at the same rate as that fixed for other citizens, insisted upon this privilege. The Tax Receiver refused however to give it the benefit of the reduced rate. Thereupon an agreement was made between the City and the Company to test the matter by paying the full amount of the bill presented by the City, but paying the same under protest, and then making an agreed case to determine the right of the parties. And this has been done.

Referring again to the requirements of the Statute applicable to

the taxation of railroads, as heretofore quoted, it will be observed that the president of such company is required by law to make the return therein described on or before September 1st of each year; and the agreed facts in this case show that this return as required by this law was made on behalf of the Louisville & Nashville Railroad Company on August 28th, 1891, which was within the required time. (Rec. p 2.)

It will further be observed that the law provides (Section 4) that immediately after the Board shall have completed its valuations each year the Auditor shall notify the Clerk of each County Court of the amount assessed for taxation in his county, and shall notify each Railroad Company of the amount of its assessment for taxation for State purposes and for the purposes of each city, town, county, part of a county and tax district in which any portion of the road lies. And the agreed facts in this case show that this notice from the Auditor of the amount of its assessment for taxation in the City of Louisville was received by the Louisville & Nashville Railroad Company on *December 26th, 1891.* (Rec. p. 2.) Of course it was impossible to pay any taxes prior to the receipt of such notice; for the amount of the tax depended of course on the amount of the assessment.

Just in this connection it is well to call the court's attention to a change made in the original statute by a subsequent amendment. The original statute of 1886 (Section 3) provided that the Board of Commissioners should meet on the first day of September in each year. It put no limit upon the time of their session, but provided by Seceion 5 that the taxes levied under the provisions of the Statute should be paid on or before the tenth day of October in each year. As a matter of fact, even when the law stood thus, the work of the Board was never completed and notice given to the railroad companies in time to pay their taxes by October 10th; and that date was practically disregarded, as it was known of course that the taxes could not be paid until after the notices were received. But by the Statute heretofore noticed of March 7th, 1890, the date of the meeting of the Commissioners was changed from September 1st to October ~~1st~~ first Monday in of each year; and this was practically a statutory abandonment of October 10th as a pay day for taxes. For when it is remembered that the first Monday in October (the day the Board must meet under the new law) may be as late as the seventh day of the month; and that after this the Commissioners must receive the reports from the Auditor, to whom they are made in the first place by the railroads, and must digest the vast amount of statistics there given them and get the additional information which the law requires, probably examining the books of the railroad companies and making inspection of their physical properties, or having them examined by other persons, and that they must then form their jndgments as to the assessments of all the railroads in the State, and of their

properties in the several cities, towns, counties and tax districts of the State; and then make their complex reports and certify them to the Auditor, who must then copy them, and certify them to the railroad companies,—we say, when it is remembered what a vast amount of work is to be done between the meeting of the Commissioners and the payment of the taxes by the railroad companies, and we see that by the change in the law they are not to meet until the first Monday in October, which may be as late as *October 7th*, it is perfectly manifest that *October 10th* as the pay day became an impossible date and was purposely abandoned, as had previously been the case in practice even when the Commissioners met on September 1st.

As previously stated, the agreed facts show that the Louisville & Nashville Railroad Company received a notice of its assessment from the Auditor on December 26, 1891. They further show that on December 31, 1891, the city presented its tax bills based upon this assessment, against the Louisville & Nashville Railroad Company, charging a tax of $2.17 for every $100 of the assessment; thus making the total tax $19,285.88; the total assessment having been $888,750.

On February 4, 1892, which was just forty days after the notice of assessment was received by the railroad company, and was just thirty-five days after the bill for taxes was presented by the city, the Louisville & Nashville Railroad Company offered to pay to the city the sum of $18,707.30, being the balance left after deducting from the face of the bill ($19,285.87) a discount of three per cent. thereon, amounting to $578.58. The city, however, refused to receive any sum less than the face of the bill; and thereafter, to wit, on February 6, 1892, the railroad company paid the face of the bill, under protest as heretofore explained; the understanding being that this agreed case would immediately be made up and filed to test the question of whether or not the railroad company at the time it made its tender was entitled to any discount at all, and if so to what discount.

The Chancellor before whom the agreed case was filed construed the law as not allowing any discount upon the property of the railroad company, and furthermore, on the authority of Mining Co. vs. New York, 143 U. S., 313, held that there was no constitutional objection to such a law. An appeal was first taken to the Superior Court of Kentucky, it being insisted by the railroad company that the Chancellor's construction of the law was erroneous; and that, as the statute expressly provided "*that the same rate of taxation*" should be applied to the assessment of railroad property as was applied to all other real estate, whether for State or municipal purposes, therefore, the proper construction of the law would be to allow the discount in question to the plaintiff, the Louisville & Nashville Railroad Company. The Superior Court had no jurisdiction of constitutional questions. This court, however, affirmed the Chancellor's construction of the statutes.

After this decision by the Superior Court, the railroad company filed grounds and moved the court to set aside the submission and judgment and transfer the cause to the Court of Appeals, on the ground that the statutes involved, according to the construction put upon them by that court, were invalid and in violation of the Constitutions both of the State of Kentucky and of the United States; and that the appellant desired to be heard on the question of the validity of such statutes (Record page 24). The court overruled the motion to set aside the submission and to transfer the cause to the Court of Appeals, but granted an appeal to that court.

The Court of Appeals, however, affirmed the judgment of the Chancellor, holding that his construction of the Statutes was correct; and, holding further, on the authority of the Kentucky Railroad Tax Cases, 115 U. S., that the Statutes were open to no constitutional objection. The court held that the effect of the Statutes was not to fix different rates of taxation upon the property of railroad companies and the property of other persons, but that the same rate was applied to all, and that there was no discrimination against the appellant.

A writ of error was allowed, and the case has been brought to this court for revision of the judgment of the Kentucky Court of Appeals.

ASSIGNMENT OF ERRORS.

Plaintiff in error insists:

1st. That the Statutes involved, according to the construction put upon them by the Court of Appeals of Kentucky, do, in substance and effect, impose a *different rate of taxation* upon the property of the Louisville & Nashville Railroad Company from that which is imposed upon other property, either real or personal, in the city of Louisville; and,

2nd. That this violates the obligation of the contract contained in the charter of the Louisville & Nashville Railroad Company, whereby it was agreed that its property should not be assessed higher than other real property; thus conflicting with the provision of the Constitution of the United States which forbids any State to pass a law impairing the obligation of a contract; and,

3rd. That, independently of the question of contract, these statutes, as construed by the Court of Appeals, impose a different rate of taxation upon the property of railroad companies from that which is imposed upon property of the same kind, in the same place and under the same circumstances, when owned by any other class of persons than railroad companies; and that, therefore, it comes within the inhibition of the 14th amendment of the Constitution of the United States, which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws.

ARGUMENT.

I.

Of course the question of the construction of these Kentucky statutes by the Kentucky courts, in so far as the court holds that it was not the purpose of the law makers to allow to the plaintiff in error the discount in question, is not open to revision in this court. And neither is the question of whether or not those statutes conflict with any provision of the Constitution of Kentucky. But as to whether or not the effect of these statutes is to impose "the same rate of taxation" upon the property of the railroad company that is imposed upon that of other persons, in view of the provision of the company's charter guaranteeing that the rate should be the same, is a question which this court must determine in order to say whether or not the provision of that charter contract has been violated.

That the statutes fix different rates and higher rates upon the property of the railroad company than are fixed upon the property of other citizens, seems to us does not admit of question. To fix a rate at $2.17 on the $100 of property, and then provide that for a period of nearly three months all persons except railroad companies shall be allowed a rebate or discount off of this rate, allowing discount which brings the rate down as low as $2.10 for a period of more than a month, and then to say that the same rate is imposed upon the railroad company which is imposed upon other citizens, seems to us so plainly erroneous and such a palpable discrimination against the railroad company that it is hardly possible to make it plainer or more glaring by any amount of argument or illustration. Suppose a lender of money should attempt to collect seven per cent. per annum in addition to the principal of his loan, where the legal rate of interest was six per cent.; and should justify this by calling the additional one per cent. a *commission* for lending his own money; would any court hesitate a moment to denounce this as an infraction of the usury laws? We think not. Or suppose a railroad company should be required by law to charge to all shippers the same rate of transportation between certain points; and it should fix a general rate, but should allow to one shipper, or to a few shippers, a rebate or discount upon this general rate; would any court hesitate to say that this was an evasion and a violation of the law requiring uniform rates? Surely not. And we have presented in the case at bar precisely the same kind of question. Every owner of property in the city of Louisville, where the rate fixed by the levy ordinance is $2.17, has an ample period of time within which he can settle his obligations to the city by the payment of $2.10, and other periods within which he can settle at less than the nominal rate; whereas there is not a day or a moment when the railroad company is allowed this privilege. If it pays its taxes the very day it receives notice from the

Auditor of the amount of its assessment, it is nevertheless required to pay $2.17 on every $100 of valuation. If this is not plain, we can not make it plainer.

As heretofore explained, we contended in the State Courts that when the Statute said in terms that "the same rate of taxation" should be applied to the property of railroad companies as was applied to other real estate, it intended to allow the discount wherever a discount was provided for by law, but if that Statute must be construed as adding a proviso, to the effect that no discount from the regular rate shall be allowed to railroad companies, then we think the proviso is manifestly in conflict with the contract contained in the charter of the Louisville & Nashville Railroad Company.

II.

Furthermore, we contend, independently of the question of contract that such a discrimination as is made by the these Stattutes, under the construction that is put upon them by the Kentucky Courts, is such a discrimination against railroad companies as is forbidden by the Fourteenth amendment to the Constitution of the United States.

Of course it will be seen that we are not complaining of the proceedings of the Commissioners in making their assessments, (which was the subject of complaint in the Kentucky Railroad Tax Cases, 115 U. S. 321). We are not complaining of lack of notice. We are not objecting to the amount of the assessment.

But accepting the assessment as fair and just, the plaintiff in error does object to having its property assessed for taxation at a higher rate of taxation than is assessed against other property of precisely similar character, in the same place and under the same circumstances. It will be observed that there is no question here as to the right of a State to impose a specific tax upon one character of property, or one class of occupations, while others are exempt. The tax in question is an *ad valorem* tax, and all the real estate in the Commonwealth is taxed *ad valorem* both for State and municipal purposes. The question presented, is a bald question of the right of a State to tax the property of one class of persons higher than it taxes the property of all other classes.

We know that for many purposes the State has a right to classify the subjects of taxation. But manifestly this right is not without limit. It cannot be said in general terms that every tax is valid where each person within the class is taxed to the same extent or in the same manner as each other member of that class. Of course it is uuderstood that the original purpose or inspiring motive for the adoption of the fourteenth amendment of the Federal Constitution was the protection of the African race; though this court has very properly held that its effect is far broader than

this and operates to protect all classes of persons. Suppose then a State should tax the property of all negroes at the rate of $2.17 on the $100, while it taxed the property of whites at $2.10 on the $1φo of value of property. Of course no one would pretend that such a tax is valid, and yet each member of the class of negroes would be taxed at precisely the same rate and in precisely the same manner as every other member of the same class.

Or suppose again that the State should provide that the real estate of all butchers should be taxed at the rate of $2.17 on the $100, while that of all other persons in a community should be taxed at a rate of $2.10 on the $100 of value. In this case, as in the other, each member of the class of butchers is taxed at the same rate as every other member of his class. But surely such taxation is not permissable under the constitutional guaranty of equal protection of the laws.

This amendment protects classes as well as individuals. "It contemplates *persons and classes of persons*" (Missouri vs. Lewis, 101 U. S. 30). It was "designed to prevent any person or *class or persons* from being singled out as a special subject for discriminating and hostile legislation." Pembino Mining Co. vs. Pennsylvania (125 U. S. 188)

It was said by Mr. Justice Field in the San Mateo Railroad Tax Cases, 13 Federal Reporter, 733, in speaking of this clause of the Federal Constitution:

"Unequal exactions in every form, or under any pretense, are absolutely forbidden; and of course unequal taxation, for it is in that form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws where arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the same kind, similarly situated, at different rates; where, for instance, one may be taxed at 1 per cent. on the value of his property,, another at 2 or 5 per cent., or where one may be thus taxed according to his color, because he is white, or black, or brown, or yellow, or according to any other rule than that of a fixed rate porportionate to the value of his property."

The doctrine of "classification" as sometimes asserted in broad and general language would make that magic word the "open sesame" by which the State could at any and all times enter the treasury of any class of citizens, whether individuals or corporations, which might for the time being meet with the disapproval of the majority.

Again, the language of Mr. Justice Field in the Santa Clara case, 18 Federal Reporter, 408, has direct application to the case at bar. He said:

"The discrimination between the railroad companies and individual proprietors, in the estimate of the value of their property, is made be-

cause of its ownership, and not from any specific differences in the character of the property, or in the specific uses to which it is applied.

"The farming lands held by the company are not different in character from adjoining farming lands held by natural persons, yet they are assessed, under the system established by the constitution of the State, upon different principles. The road-bed, roadway, rails and rolling stock of the railroad companies are not different in their nature or use from the road-bed, roadway, rails and rolling stock owned in many cases by natural persons, yet they are subject to a different rule of assessment. It is not classifying property to make a distinction of that character in estimating its value as a basis for taxation. It is making the amount of taxation depend, not upon the nature of the property or its use, but upon its ownership. And if this can be done, there is no protection against unequal and oppressive taxation."

Now take the case at bar. If the Court will look at the tax bill made out against what is called the "Main Stem" of the Louisville & Nashville Railroad Company (Record page 10) it will observe that the company is assessed as follows:

1.82 miles of track	$ 68.250.00
Other property	583.530.00
Total	$651.780.00

It will be remembered that the statute providing for the taxation of railroads (Section 1) in speaking of the reports which the officials are required to make to the Auditor requires each report to state the length of the road within the State, and within each county, city and incorporated town, together with the average value per mile thereof, *including engines and cars*, "and a list of the depot grounds and improvements, and *other real estate* of the said company, and the value thereof, and the respective counties, cities and incorporated towns in which the same are located." And again it will be remembered that another section of the statute (Section 4) provides that "the same rate of taxation for the purposes of each city, town, county, part of a county, or tax district of any kind in which any portion of any railroad is located, which is, or may be, in any year levied on other real estate therein, shall be, and is hereby, levied on the value of the *real estate* of said company therein, and of the number of miles of such road therein, reckoned as of the value of the average value of each mile of such railroad, *with its rolling stock*, as ascertained as aforesaid."

Thus it is plain that all of the engines, cars and other rolling stock of the railroad company are included in the assessment of the *railroad*. Thus leaving the "other property" referred to in the tax bill to consist, as it plainly was intended by the statute to consist, of the real estate of the company, its office building, its depots, its warehouses, its machine shops, and the lands upon which

they are situated, and its blocks of property which it uses as storage yards for its cars, and to furnish switching facilities in the making up and breaking up of trains.

Leaving out of question for the moment its railroad track, right of way and rolling stock, yet we see from the assessment in question that $583,530.00 of the assessment against the Louisville & Nashville Railroad Company consists of property other than such right of way, track or rolling stock. It is property precisely similar to other property all around it used by individuals and other corporations. No one could tell that its stone office building is the property of a railroad company if it did not have the name of the company above the front door. There is no difference in character between its great freight depot and the land upon which it stands, and, on the other hand, the great tobacco warehouses which are owned by individuals, and in which thousands of hogsheads of tobacco are continually stored. There is no difference between its machine shops, and the lands upon which they stand, wherein its engines and cars are made or repaired, and, on the other hand, the machine shops and lands of the Kentucky Wagon Manufacturing Company wherein wagons are made and repaired. There is no difference between its blocks of land which it uses for standing its idle cars, or for moving them from one place to another, and, on the other hand, the lands of the stock trader who has his yards in connection with his stable, wherein to place the live stock he has in trade. The only difference or distinction that can be drawn between these several kinds of property is that in the one case it is owned *by a railroad company*, and in the other case the properties are owned by natural persons or by other kinds of corporations. The distinction is between *classes of persons*, and not between *kinds of property*.

And this is just as plainly forbidden by the fourteenth amendment to the Constitution of the United States as if it should be attempted to tax the property of negroes or of catholics, or of butchers or bakers, or any other *class of persons*, at a different and higher rate from that which is imposed upon the property of persons composing the majority of the community.

The distinction can not be defended on the ground that the railroad company is a corporation. It has been settled by this court that corporations are " persons " within the meaning of the fourteenth amendment to the Constitution (Pembino Mining Co. *vs.* Pennsylvania, 125 U. S. 189). And while the charter of the Louisville & Nashville Railroad Company is not repealable, because granted long prior to the passage of any act reserving the power of amendment or repeal to the State; yet even if it were so, there is a vast distinction between repealing the charter of a corporation and, on the other hand, confiscating its property. And this distinction has often been recognized by the Court of Appeals of Kentucky (Orr *vs.* Bracken County, 81 Ky. 596; Commonwealth

vs. Covington & Cincinnati Bridge Company, 21 S. W. Rep. 1046). So long as the corporation is permitted by the State to exist as a "person," it is entitled to the equal protection of the laws guaranteed by the Constitution of the United States, and can not be spoiliated any more than can an individual.

Plainly, therefore, so far as the taxes imposed by the City of Louisville upon the "other property" of the Louisville & Nashville Railroad Company, referred to in the tax bills, is concerned, the railroad company was entitled to the same discount which is allowed to individuals.

But we think we can go further and apply this rule also to what is described in the bills as "track," which includes the right of way, railroad track and rolling stock. As said by Mr. Justice Field in the language already quoted, "the road-bed, roadway, rails, and rolling stock of the railroad companies are not different in their natures or use from the road-bed, roadway, rails, and rolling stock owned in many cases by natural persons." It must be remembered that we are not questioning the right of the State to levy a specific tax upon railroads. This has not been attempted, but the power to do so would not be denied. We are not objecting to the State's classification of railroad property for the purposes of *assessing* it by some different rule, or mode of proceedure, or assessing officer, from that which applies to or assesses the property of others. We fully recognize the State's power to classify property for this purpose, as recognized by this court in the Kentucky Railroad Tax Cases, 115 U. S. But when this property, referring now even to the right of way, track, and rolling stock, has been assessed; when its value has been determined; and when an *ad valorem* tax has been determined upon as the proper system of taxation for all property in the State, then what possible reason or excuse can there be for imposing a greater burden upon this property than is imposed upon other property?

It can not even be said, as is often contended with respect to the taxation of certain kinds or classes of property, that the burden is equalized over the whole community by reason of the fact that the amount of the tax can be added to the charge for services, or to the charge for products produced, because the rates of charge which may be demanded by the railroad company are *limited* by its charter, as well as by competition with other railroad companies existing under other systems of taxation; so that there is no chance for the distribution of this increased burden over others in the community. It must be borne alone by the railroad company.

The case is not one where the inequality is a mere incidental or accidental result of a system of taxation fair in its general operation. But it is one where the inequality results necessarily, inevitably, and in every case, and for every year, between the property of railroad companies and the property of other persons.

The latter always have the right to the reduced rate; while the former never have it.

In Cooley's Constitutional Limitations, page 614, the author says:

"As to all taxation apportioned upon property, there must be taxing districts, and within these districts the rule of absolute uniformity must be applicable."

In Stratton *vs.* Collins, 43 N. Y. Law Reports, 562, 565, the Supreme Court of New Jersey explains that the rule of uniformity does not require all property to be taxed, but says:

"The property to be taxed being thus indicated, the direction that it shall be assessed by uniform rules, according to its true value, becomes then applicable. The direction requires, and is fulfilled by such regulations as should impose the same percentage of its actual value upon the taxable property in the township for township purposes, in the county for county purposes, and in the State for State purposes."

The case of Knowlton *vs.* Board of Supervisors of Rock county, 9 Wisconsin, 410 is a fine illustration of the attempts at "classification" that are sometimes made; and the language of the Court in condeming it is so strong, and seems to us to illustrate so clearly the sins that may be committed in this name that we quote it at some length. The Constitution of Wisconsin required all taxation to be uniform (this being a fundamental principle of all taxation whether required by a written Constitution or not). The attempt was made to tax all the real estate within the limits of a certain recorded plat at one rate, while all property outside of the limits of that plat were taxed at a different rate. Speaking upon this subject (p. 421) the Supreme Court of Wisconsin said:

"It was contended in argument that as those provisions fixed one uniform rate without the recorded plats and another within them, thus taxing all the property without alike, and all within alike, they do not infringe the constitution. In other words, that, for the purpose of taxation, the legislature have the right arbitrarily to divide up and classify the property of the citizens, and having done so, they do not violate the constitutional rule of uniformity, provided all the property within a given class is rated alike.

"The answer to this argument is, that it creates different rules of taxation to the number of which there is no limit, except that fixed by legislative discretion, whilst the constitution establishes but one fixed, unbending, uniform rule upon the subject. It is believed that if the legislature can by classification thus arbitrarily and without regard to value, discriminate in the same municipal corporation between personal and real property within, and personal and real property without, a recorded plat, they can also, by the same means, discriminate between

lands used for one purpose and those used for another; such as lands used for growing wheat and those used for growing corn, or any other crop; meadow lands and pasture lands; cultivated and udcultivated lands; or they can classify by the description, such as odd numbered lots and blocks, and even numbered ones, or odd and even numbered sections. Personal property can be classified by its character, use or description, or, as in the present case, by its *location*, and thus the *rules* of taxation may be multiplied to an extent equal in number to the different kinds, uses, descriptions and locations of real and personal property.

"We do not see why the system may not be carried further and the classification be made by character, trade, profession or business of the owners. For certainly this rule of uniformity can as well be applied to such a classification as any other, and thus the constitutional provision be saved intact. Such a construction would make the constitution operative only to the extent of prohibiting the legislature from discriminating in favor of particular individuals, and would reduce the people, while considering so grave and important a proposition to the ridiculous attitude of saying to the legislature, 'you shall not discriminate between single individuals or corporations, but you may divide the citizens up into different classes as the followers of difierent trades, professions, or kinds of business, or as the owners of different species or description of property, and legislate for one class and against another, as much as you please, provided you serve all of the favored and unfavored classes alike;' thus affording a direct and solemn constitutional sanction to a system of taxation so manifestly and grossly unjust, that it will not find an apologist anywhere, at least outside of those who are the recipients of its favors. We do not believe the framers of that instrument intended such a construction, and therefore can not adopt it."

The case at bar is not a case of the exemption of certain property from taxation in order to encourage or promote it. It is not a case, on the other hand, of imposing high taxes in the shape of license or otherwise, upon property or occupations deleterious to the health or morality of the community, or which need regulation on account of any peculiarity of nature. It is not a case where any reason can be conceived of for making a discrimination against it.

It is sought to defend this system of taxation by the statement that the discount allowed to all owners of property other than railroad companies is for the prompt payment of taxes; but that the railroad company was a year late in the payment of its taxes, and hence was not entitled upon any principle of justice or fairness to the discount for prompt payment. We most respectfully submit that this view of the case results from a complete misapprehension of the true facts of the case. It is here necessary to recur somewhat in detail to the practical operation of the tax laws as applied to the property of railroad companies and the property of other persons. Railroad property is assessed as of *July 1st* each year (thus being exactly in the middle of the year). Other

property is assessed as of *September 1st* each year. The actual assessment of railroad property is made and reported by the Commissioners generally in *December* following the July 1st as of which the assessment is made; while the actual assessment of the property of other persons is made along during the fall, and the bills listed for collection with the City Assessor by *January 3d*, following the September as of which the assessment was made. In other words, the two assessing tribunals, in the one case the Railroad Commissioners, and in the other case the City Assessor, are actually engaged in their work of assessing at the same time during the year, to wit, along in October, November and December; and they reach and report their results practically at the same time—the Railroad Commissioners generally some time in December, and the City Assessor early in January. Of course, it follows also that the taxes based on these assesaments thus become payable practically at the same time. But for some reason which we will presently explain, the City Collector chooses to denominate the railroad tax as a tax for the year of the date as of which the assessment is made, while he chooses to denominate the tax upon property of other persons as the tax of the year following the date as of which the assessment is made. Thus taxes on general property assessed as of Sept. 1, 1891, he calls, "taxes of 1892," but taxes on railroad property, assessed as of July 1, 1891, he calls, taxes of 1891; *although the State Auditor regards them as taxes of 1892* (Exhibit G. Rec. P. 14).

The reason this nomenclature has been adopted arises out of the fact that the city officials got started this way many years ago, when this change in the manner of assessing railroads was first adopted, to wit, in 1878. Prior to that time all property had been assessed by the City Assessor, and had been assessed as of the 1st of of January of each year for that year, and became payable on the 1st of the following June. In 1878 this new act for the assessment of railroad companies was passed in April, before the railroad taxes for that year became due, and the Board created by that act assessed railroad property in the following fall for that year, to wit, the year 1878; and the taxes based upon that assessment were paid in the following winter, being known as the taxes of 1878. This same system of proceedure has continued on down to the present day, except, as heretofore noted, the date of the meeting of the Railroad Commissioners has been made later than formerly, which has thus made the assessment later in the year. On the other hand, however, when the change in the law was made as to the assessment of other property, so that the assessment was made as of the 1st of September preceding the year for which the tax was assessed, instead of being made as of the 1st of January, taxes thus assessed became known as the taxes for the year following the date of assessment. And thus it is that railroad taxes assessed as of July 1st 1890, and upon which the assess-

ment was actually made in December, and the taxes paid in December or January, are called taxes of 1890, by the city officials; while the taxes upon other property assessed as of a date just two months later than the railroad property, to wit, September 1st, and actually assessed practically at the same time, are called taxes of 1891.

Now it may possibly be contended that at the time of the original institution of these changes in the mode of taxation the railroad companies gained some advantage over other owners of property; though we cannot see that they did, because, after all, the taxes that were paid by either the one or the other class were taxes for one year. But if such advantage was gained it was only an advantage for that one year. Subsequent to that year each class was assessed for one year, was assessed as of nearly the same date, was actually assessed practically at the same time; and its taxes became due practically at the same time; and thus they continued year after year, from the time of the original change down to the present time.

Thus it will be seen to be wholly erroneous to say that a railroad company is a year late in paying its taxes, which it pays in January, 1891, simply because the Assessor chooses to call that the tax of 1890, although it was not assessed and did not become due until December, 1890.

Again the fact is pointed out, however, that as a result of this procedure railroad property is taxed according to the rate fixed in the levy ordinance of 1890, while the property of other persons is taxed according to the rate fixed in the levy ordinance of 1891; although the assessments are made at the same time, and the taxes become due at the same time. We will presently explain the reason why this is done. But whatever may be the reason, it is manifest that it operates with absolute justice to the two parties. It is true that these rates vary. The levy ordinance of 1891, it is true, may fix a tax rate of $2.17, while the levy ordinance of 1890 had only fixed a tax rate of $2.15; so that if those two years alone be considered, the railroad company paying in January, 1891, would pay on a $2.15 rate, while other owners of property would pay on a $2.17 rate. But in 1892 it is just as likely that the levy ordinance again went back to the rate of $2.15; so that railroad companies paying taxes in January, 1892, would pay on a rate of $2.17, while other owners of property paying taxes at the same time would pay on a rate of $2.15. In other words, the rate fixed for the property of railroads is always just what the rate had been for the property of other persons the preceding year, and is just as apt to be against the railroad company as to be in favor of it. As a matter of fact, in the years 1891 and 1892, being the specific years involved in this action, the tax rates were identically the same.

The reason why this difference in rates has been continued by

the City Assessor, is that the levy ordinances are required by statute, as heretofore quoted, to be passed each year in the month of December. Then as the Railroad Commissioners meet the first of October and *may* complete their labors and give notice of the results prior to the adoption of the levy ordinance, therefore the tax rate of the preceeding December is always applied to railroad property; while as to the property of other persons, as the tax bills are made out in the early part of January, and always after the adoption of the December levy ordinance, therefore there is no difficulty in applying its terms to such bills.

The explanation of these facts and the operation of these laws may seem complicated, but as a matter of fact and actual practice it is perfectly simple, and they run on year after year exactly in the same way. It is therefore wholly unjust to the railroad companies to say that they are not entitled under the law to a discount for prompt payment because they are a year late. They are not a year late. They pay in January, 1892, on assessments made in December, 1891, just as they paid in January, 1891, on assessments made in 1890, and paid in January, 1890, on assessments made in December, 1889.

We respectfully submit therefore that the *proviso*, which by the construction of the Court of Appeals of Kentucky is practically inserted in the railroad taxing statutes, to the effect that while the same rate of taxation shall be applied to the property of railroad companies as to that of other persons, yet no abatement, or rebate, or discount on the tax as applied to other persons shall be applied to railroad companies, is a denial of equal protection of the laws to railroad companies; is a necessary, and not a mere incidental violation of the law of uniformity in taxation; and is the imposition of an unjust and unconstitutional burden upon such owners of property; as well as a direct violation of the contract rights of the particular railroad company involved in this action.

If it be said there is difficulty in applying exactly the same rule as to discounts to railroad companies as to others, because the taxes do not become payable exactly at the same time, the response is that the State has no right, by merely varying the time of payment for one class of persons, to cut it off from all right to the reduced rate which is allowed to every other person and class of persons in the community; and *practical* equality can be secured by allowing the discount to the railroad companies for the same number of days after notice of their assessment as intervenes between January 3 and the 10th working day in February, &c, and this can be secured by simply nullifying the *proviso* which the Court of Appeals finds in the statute.

As to the amount of rebate which should be allowed in the present case, we are inclined to think it should be not the three per cent, but the two per cent rebate. The three per cent rebate is allowed to persons other than railroad companies during the

month of January and the first ten working days of February, which makes 38 or possibly 39 days subsequent to the date when the taxes become payable, to-wit, January 3rd. The railroad company in the present case received notice of its assessment on December 26th, and made a tender of its taxes on February 4th. This however was the fortieth day after the notice was received; so that it was probably not entitled to the three per cent discount, but clearly was entitled to the two per cent discount.

Furthermore, we insist that this discount should be applied to the entire property of the railroad company assessed in the city of Louisville—not merely to its real estate—both because of the contract contained in the charter of the company, and also because to deny it this right is to deny it the equal protection of the laws. But on the latter branch of the question, if the court should consider that there is any ground for justifying a refusal to allow this reduction as to the right of way, tracks and rolling stock on some theory of classification of *kind*s of property, yet there is manifestly no ground for refusing it as to the "other property" of the railroad company in the city, to-wit, its real estate, which is of the same character as all other real estate in the city.

CONCLUSION.

We, therefore, respectfully ask that the judgment of the Court of Appeals of Kentucky be reversed, with directions to allow plaintiff in error such discount on its taxes as other persons are allowed by law upon theirs paid within the same length of time after the same have become payable.

Respectfully submitted,

JAMES P. HELM,
HELM BRUCE,
Attorneys for Plaintiff in Error.

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(15,867.)

Office Supreme Court, U. S.
FILED.
MAR 31 1897
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 261.

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ... PLAINTIFF IN ERROR,

vs.

CITY OF LOUISVILLE, ... DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

HENRY L. STONE,
City Attorney of the Defendant in Error.

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BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case was commenced by a statement of agreed facts between the parties being filed in the Louisville Chancery Court April 22, 1892, authorized by the following provisions of the Civil Code of Practice of the State of Kentucky:

"SEC. 637. Parties to a question which might be the subject of a civil action may, without action, state the question and the facts upon which it depends, and present a submission thereof to any court which would have jurisdiction, if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall, thereupon, hear and determine the case, and render judgment as if an action were pending.

"SEC. 638. The case, the submission, and the judgment shall constitute the record.

"SEC. 639. The judgment shall be with costs, and may be enforced, and shall be subject to reversal, in the same manner as if it had been rendered in an action, unless otherwise provided in the submission."

In this statement of agreed facts (*Record, pp.* 2–5), it will be observed that there is no reference made to the charter of the plaintiff

in error, the Louisville & Nashville Railroad Company, nor when or by what authority it was incorporated, nor to any special provision in its charter. But in the outset of their statement of this case, the learned counsel for the plaintiff in error quote from section 18 of said charter a provision that the property of said company "*shall never be taxed beyond the rate of tax imposed upon real estate.*"

It is further stated in the brief of counsel for plaintiff in error that at the date said charter was granted (March 5, 1850), the State of Kentucky had not passed any general statute reserving the power to alter, amend, or repeal charters or acts of incorporation, nor was this done until 1856. This reference in the brief of counsel to this charter provision is doubtless made to create on this Court the impression that the plaintiff in error claimed in the record to have a contract with the State of Kentucky on the subject of taxation, and that the statutes of the State, the construction of which by the State courts was involved in this controversy, violated the provision of the Constitution of the United States, which provides that "no State shall pass any law impairing the obligation of contracts." No such issue, however, was raised or presented in the statement of agreed facts, nor in the entire record, as this Court will find on inspection. No pleadings having been filed, this Court must look to the statement of agreed facts to ascertain the issue in the case. That issue is the one question whether, under the provisions of the charter of the City of Louisville, the Louisville & Nashville Railroad Company was entitled to the same discount on its tax bills which is allowed individual tax payers for prompt payment in the months of January, February, and March. It is not pretended that a different *rate* of taxation is levied by the city of Louisville on the property of railroads from that levied upon other property. As to railroads, and similar corporations, the assessment was made by the Railroad Commission, as of July 1, and the taxes thereon due the city were payable on October 1 in the same year; and if not then paid, the city had its remedy by action in the civil courts. The assessment of the property of individuals, under the municipal law, was by the local City Assessor as of September 1, in the preceding year, and the taxes thereon were payable on January 3, in the succeeding year.

The taxes paid by the plaintiff in error February 6, 1892, were for the fiscal year ending August 31, 1891, while the taxes of individual tax payers, who paid in January and February, 1892, and were entitled to the discount for prompt payment, were the taxes for the fiscal year ending August 31, 1892. So far as the record discloses the plaintiff in error did not question the validity of either

statute, but claimed to be entitled to the discount on its tax bills for 1891, based on the assessments made by the Railroad Commission, when such discount was allowed for prompt payment only of tax bills for the year 1892, made out on assessments by the local City Assessor.

ARGUMENT.

The first point to be decided by the Court on this writ of error is: Was there a Federal question raised and decided by the State court?

This Court, in the *Kentucky Railroad Tax Cases*, 115 *U. S.*, 322, upheld the validity of substantially the same statute pertaining to the taxation of railroads as was in force in Kentucky in 1891–2.

It will be noticed that each State court called upon to decide this case rendered judgment against the plaintiff in error. First the Louisville Chancery Court, June 20, 1892, (*Record, pp.* 18–19); then the Superior Court, March 1, 1893, (*Ib., pp.* 21–24); and finally the Court of Appeals, March 5, 1895, (*Ib., pp.* 26–27).

The opinions of these three State courts show that this controversy was purely a matter of *construction*, and that no *constitutional* question was involved at all.

The record from beginning to end absolutely fails to show that any Federal question was raised or decided by either of the State courts mentioned. Not the slightest suggestion of any question arising under the Constitution of the United States is to be found in the statement of agreed facts which takes the place of pleadings and a bill of exceptions. No claim is made therein that either of the statutes mentioned in the record respecting the assessment and collection of taxes for municipal purposes violates any provision of the Federal Constitution.

In the opinion of the Chancellor (*Record, pp.* 18–19), there is nothing stated to indicate that the plaintiff in error raised any Federal question in the trial of the case in the Chancery Court.

In the opinion of the Superior Court (*Record, p.* 22), it is said:

"It is not claimed that the provision of the charter allowing a discount to tax-payers for prompt payment is in itself invalid, but it is argued that unless it is so *construed* as to allow railroad companies the same discount, the *discrimination* will render it invalid as to such companies. *As to this, we think it sufficient to say that no constitutional question is involved. It is simply a matter of construction.*"

It is true a motion was made by counsel for plaintiff in error in the intermediate court, called the Superior Court, for an appeal to

the Court of Appeals, wherein it is stated *generally* that the statute, as construed by said Superior Court, was in violation of the constitutions of the State of Kentucky and of the United States, but in what particular, or what section or clause of either constitution is contravened is not specified. That motion (*Record, p.* 24), is as follows:

"This day came appellant, by counsel, and stated to the court that it believes the statutes involved in this action, as to the taxation of railroad property in the city of Louisville, as *construed* by the court in its opinion lately delivered herein, to be invalid and to be *in violation of the Constitutions of the State of Kentucky and of the United States*, and that it desired to be heard on the question of the validity of said statutes, and thereupon moved the court to set aside its judgment and the order of submission herein and to transfer this action to the Court of Appeals; and came defendant further, by counsel, and moved the court to grant it an appeal from its judgment herein to the Court of Appeals in the event the court should overrule the preceding motions above set forth."

The appeal to the Court of Appeals was granted (*Record, p.* 25); but it does not appear from the record that reference was ever made to any supposed violation of the Constitution of the United States in the latter court. Certainly no Federal question was specifically raised by plaintiff in error, or its counsel, in the Court of Appeals, or decided by that court so far as can be ascertained *from the record.*

It would seem from the Superior Court's opinion, that it was argued in that court by counsel for the plaintiff in error that unless the municipal statute was so construed as to allow it the discount claimed, the supposed discrimination would render that statute invalid as to railroad companies. That court, however, said that "no constitutional question is involved. It is simply a matter of construction." It is not stated what the constitutional question was, or whether it was made under the State or Federal Constitution. It may have been claimed that the alleged discrimination was in violation of that provision of the State Constitution that "no man, or set of men, are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services." (*Sec.* 1, *art.* xiii, *Kentucky Constitution of* 1850.)

In the opinion of the Court of Appeals (*Record, pp.* 26–27) by Chief Justice Pryor, it is said:

"The same rate of taxation is imposed on the citizen that is required to be paid by the railroad company. The city, under its charter, adopts one mode of collecting taxes from the citizen, and

the State adopts another mode of enabling the city to collect of the corporation. The system of levy, collection, and procedure are entirely different, the one from the other, and resulting to the benefit of the corporation.

"The city is not allowed to fix any value on appellant's property. The penalty on those failing to pay taxes to the city is not made to apply to the appellant, and it is plain, we think, that the charter provision or the law in regard to the assessment, collection, and payment of the taxes of the citizen within the municipality does not include railroads or such corporate property, and equally apparent that the Legislature, in regard to those corporations, can enact a different system or mode of assessment and collection from that under which taxes are ordinarily collected, and the discount allowed the citizen to encourage the prompt payment of taxes is *not a discrimination in his favor as against appellant, nor is it open to constitutional objection.*"

Again, this court must be at a loss to determine what was the precise constitutional objection urged in the Court of Appeals, or whether it was founded upon a provision of the State or Federal Constitution. No express reference is made in the whole record to the Constitution of the United States (except in the motion referred to in the Superior Court, *Record, p.* 24), until it appears in the writ of error issued and filed March 29, 1895, more than three weeks after the final decision in the case by the Court of Appeals of Kentucky. (*Record, pp.* 27–28).

Even in the assignment of errors filed April 1, 1895 (*Record, p.* 29), there is no Federal question raised. The only clause having the slightest bearing in that direction is found in the fourth error assigned, wherein it is alleged that the State court erred in holding the allowance of a discount on taxes to the citizens generally and the denial of the same right to railroad companies is not a *discrimination* in favor of the citizen as against railroad companies, and not open to *constitutional* objection. There is no complaint therein that either of the State statutes referred to in the record impairs the obligation of any supposed contract with the State contained in the charter of the plaintiff in error, or that these statutes come within the prohibition of the Fourteenth Amendment to the Constitution of the United States, that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

But when this Court looks into the brief of counsel for the plaintiff in error (*p.* 8), it will observe a new departure in the assignment of errors—a totally different assignment in fact, wherein two Federal questions are presented for the consideration of this Court. Of course, this Court can not consider this attempted assignment of

errors in the brief of counsel, but will decide this writ of error upon the only legal assignment of errors filed in the State court, and forming a part of the record.

That this Court may see clearly the difference between these two assignments of error, I here present them in parallel columns:

"1. The court erred in affirming the judgment of the Louisville Chancery Court in not reversing same and ordering a judgment to be entered in favor of Louisville & Nashville Railroad Company against City of Louisville for $578.58, with interest thereon from February 6th, 1892, until paid, and the costs of the action.

"2. The court erred in holding that under the tax laws governing taxation of property in the city of Louisville, as construed by said court, the same rate of taxation is imposed on the citizen that is required to be paid by the railroad companies.

"3. The court erred in holding that the Legislature, in regard to railroad corporations, can enact a different system or mode of assessment and collection from that under which taxes are ordinarily collected, when such difference results, as in this case, under the court's construction of the statutes, in imposing heavier burdens of taxation on one class of citizens than are imposed on all others.

"4. The court erred in holding that the allowance of a discount on taxes to the citizens generally and the denial of the same right to railroad companies is not a *discrimination* in favor of the citizen as against the Louisville & Nashville Railroad Company and other railroad companies and *not open to constitutional objection*, but is a valid exercise of legislative power, and in holding that the *Kentucky Railroad Tax Cases*, 115 *U. S.*, are authority for such proposition.

"1. That the statutes involved, according to the construction put upon them by the Court of Appeals of Kentucky, do, in substance and effect, impose a *different rate of taxation* upon the property of the Louisville & Nashville Railroad Company from that which is imposed upon other property, either real or personal, in the city of Louisville; and,

"2. *That this violates the obligation of the contract contained in the charter of the Louisville & Nashville Railroad Company*, whereby it was agreed that its property should not be assessed higher than other real property; *thus conflicting with the provision of the Constitution of the United States which forbids any State to pass a law impairing the obligation of a contract;* and,

"3. That, independently of the question of contract, these statutes, as construed by the Court of Appeals, impose a different rate of taxation upon the property of railroad companies from that which is imposed upon property of the same kind, in the same place and under the same circumstances, when owned by any other class of persons than railroad companies; and that, therefore, *it comes within the inhibition of the Fourteenth Amendment of the Constitution of the United States, which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws.*" (*Brief, p.* 8.)

"5. The court erred in holding that the Louisville & Nashville Railroad Company was not, when it offered to pay or did pay its taxes to the city of Louisville, as shown by this record, or at any time, entitled to any discount on the face of the tax bill against it, and that the city had the right to enforce collection of the full amount of the tax bill, without allowing such discount as other citizens are allowed under similar circumstances, and to retain the full amount of such collection, although paid under protest." (*Record, p.* 29.)

The mere fact that the writ of error in this case was allowed by the Chief Justice of the Court of Appeals of Kentucky is not sufficient to confer jurisdiction upon this Court to re-examine the judgment of that court.

In *Powell* v. *Supervisors of Brunswick County*, 150 *U. S.*, 433–442, this Court, by Chief Justice Fuller, said:

"The determination of the jurisdiction of this court to review the judgment of a State court under section seven hundred and nine of the Revised Statutes necessarily devolves upon the court itself, and, while the certificate of the presiding judge of the State court as to the existence of the state of case upon which our interposition may be successfully invoked is always regarded with respect, it cannot confer jurisdiction upon this court to re-examine the judgment below. *Lawler* v. *Walker*, 14 *How.*, 149; *Mississippi & M. R. Co.* v. *Rock*, 4 *Wall.*, 177; *Parmalee* v. *Lawrence*, 11 *Wall.*, 36; *Caperton* v. *Bowyer*, 14 *Wall.*, 216; *Brown* v. *Atwell*, 92 *U. S.*, 327; *Gross* v. *United States Mortgage Co.*, 108 *U. S.*, 477; *Felix* v. *Scharnweber*, 125 *U. S.*, 54; *Roby* v. *Colehour*, 146 *U. S.*, 153.

"In *Parmalee* v. *Lawrence*, Mr. Justice Nelson, speaking for the court, said: 'We will add, if this court should entertain jurisdiction upon a certificate alone in the absence of any evidence of the question in the record, then the supreme court of the State can give the jurisdiction in every case where the question is made by counsel in the argument. The office of the certificate, as it respects the Federal question, is to make more certain and specific what is too general and indefinite in the record, but is incompetent to originate the question within the true construction of the 25th section.'

"As many times reiterated, it is essential to the maintenance of jurisdiction upon the ground of erroneous decision as to the validity of a State statute or a right under the Constitution of the United

States, that it should appear *from the record* that the validity of such statute was drawn in question as repugnant to the Constitution and that the decision sustained its validity, or that the right was specially set up or claimed and denied. If it appear from the record by clear and necessary intendment that the Federal question must have been directly involved so that the State court could not have given judgment without deciding it, that will be sufficient; but resort cannot be had to the expedient of importing into the record the legislation of the State as judicially known to its courts, and holding the validity of such legislation to have been drawn in question, and a decision necessarily rendered thereon, in arriving at conclusions upon the matters actually presented and considered.

"A definite issue as to the validity of the statute or the possession of the right must be distinctly deducible from the record before the State court can be held to have disposed of such a Federal question by its decision.

"*The bill of complaint in this case nowhere claimed relief by reason of any right, title, privilege, or immunity under the Constitution of the United States*, or because of the violation by the proceedings in reference to the subscription, of any provision of that Constitution, nor did the petition in error to the Court of Appeals suggest any Federal question."

The same rule is announced in the recent case of *Dibble* v. *Bellingham Bay Land Co.*, 163 *U. S.*, 63.

In *Schuyler National Bank* v. *Bolling*, 150 *U. S.*, 85–90, this Court, by Chief Justice Fuller, said:

"It is not contended that the writ of error can be maintained except upon the theory that the decision of the State court was against some title, right, privilege, or immunity claimed by plaintiff in error under the statutes of the United States. But by the requirements, to the exercise of our jurisdiction, of section 709 of the Revised Statutes, the title, right, privilege, or immunity thus relied on must be *specially set up or claimed in the State court at the proper time and in the proper way.* The decision must be against the title, right, privilege, or immunity so set up or claimed. *Ex parte Spies*, 123 *U. S.*, 131; *Brooks* v. *Missouri*, 124 *U. S.*, 394; *Chappell* v. *Bradshaw*, 128 *U. S.*, 132; *Texas & P. R. R. Co.* v. *Southern Pacific R. Co.*, 137 *U. S.*, 48."

To give this Court jurisdiction of a writ of error to a State court, the record must show that a Federal question not only might have been, but actually was raised and decided adversely to the plaintiff in error. (*Kansas Endowment & Benevolent Association* v. *Kansas*, 120 *U. S.*, 103; *Church* v. *Kelsey*, 121 *U. S.*, 282; *Clark* v. *Pennsylvania*, 128 *U. S.*, 395; *Gray* v. *Coan*, 154 *U. S.*, 589.)

To give this Court jurisdiction under *section* 25 of the Judiciary Act, (*or sec.* 709, *Rev. Stats.*), two things should have occurred and

be apparent *in the record:* First, that some of the questions stated did arise in the court below; and, second, that a decision was actually made thereon by the same court adversely to the appellant or plaintiff in error in the manner required by said section. (*Crowell* v. *Randell*, 10 *Pet.*, 368; *McKinney* v. *Carroll*, 12 *Pet.*, 66; *Commercial Bank of Cincinnati* v. *Buckingham*, 5 *How.*, 317; *Brown* v. *Colorado*, 106 *U. S.*, 97; *Detroit City Railway Co.* v. *Guthard*, 114 *U. S*, 133.)

In the case last cited this Court, by Chief Justice Waite, used this language, which is peculiarly applicable to the contention of counsel for the plaintiff in error in this case:

"It remains only to apply this well established rule to the facts as they appear in this record. The claim now is that, under the operation of sections 22 and 31 of the Incorporating Act, the State entered into a contract with this corporation not to subject it to taxation otherwise than in the way provided in section 22, unless it did so by statute in which the company should be specially named. The record certainly does not show that any such claim was made in the State courts, or that such a question was raised or presented for decision, or that it was decided. Nothing of the kind appears, either in the *pleadings* or the *findings of fact* on which alone the case was heard in the Supreme Court. The apparent question presented for decision was whether the State had changed the mode of taxation by what was done, not whether it was prohibited by the Constitution of the United States from doing so without specifying that the repeal of section 22, and the provisions of the general tax law of 1882, were to operate on this particular company, and referring to it by name. No judge, in deciding the case as it came up on the record, would be likely to suppose that, if he gave judgment for the receiver of taxes, he would deny the company any 'right, title, privilege, or immunity, specially set up or claimed,' under the Constitution of the United States."

Where it does not appear *from the record* that a Federal question was actually presented or in any way relied on *before final judgment* below, this Court is without jurisdiction. (*Zimmerman* v. *Nebraska*, 116 *U. S.*, 54.)

To give this Court jurisdiction to revise the judgment of the State court, it must appear *from the record* that the point on which plaintiff relies was made in the State court and decided against him, and that the *section* of the Constitution of the United States relied on was brought to the notice of the State court, and the right which he now claims here was claimed under it. (*Poydras* v. *Louisiana*, 18 *How.*, 192; *Maxwell* v. *Newbold*, *Ib.*, 511; *Hoyt* v. *Thompson*, 1 *Black*, 518; *Farney* v. *Towle*, *Ib.*, 350; *Taylor* v. *Morton*, 2 *Black*, 481; *The Victory* v. *Boylan*, 6 *Wall.*, 387; *Worthy* v. *Barret*, 9 *Wall.*,

611; *Messenger* v. *Mason*, 10 *Wall.*, 507; *Cockroft* v. *Vose*, 14 *Wall.*, 5; *Caperton* v. *Bowyer*, *Ib.*, 216; *Susquehanna Boom Co.* v. *West Branch Boom Co.*, 110 *U. S.*, 57; *Santa Cruz Co.* v. *Santa Cruz R. R. Co.*, 111 *U. S.*, 361.)

Where this Court can see that the decision of the State court depended not upon the *question of the constitutionality* of a State statute, but upon its *construction*, it will not take jurisdiction of the case under section 25 of the Judiciary Act. (*McBride* v. *Hoey*, 11 *Pet.*, 167; *Lawler* v. *Walker*, 14 *How.*, 149; *Robertson* v. *Coulter*, 16 *How.*, 106; *Marshall* v. *Ladd*, *Ib.*, 864; *Grand Gulf R. R. & B. Co.* v. *Marshall*, 12 *How.*, 165.)

In an action in a State court a defense of an immunity under a State law or a State constitution presents no Federal question and gives this court no jurisdiction. (*Mitchell* v. *Clark*, 110 *U. S.*, 633.)

A question of State law alone does not present a Federal question so as to give this court jurisdiction over a State judgment. In such case the judgment of the State court is final. (*Worthy* v. *Marston*, 14 *Wall.*, 10; *Sevier* v. *Haskell*, *Ib.*, 12.)

In *Morrison* v. *Watson*, 154 *U. S.*, 111–115, it was held:

"In order to give this court jurisdiction of a writ of error to review a judgment of the highest court of a State, on the ground that it decided against a title, right, privilege, or immunity claimed under the Constitution, or a treaty, or a statute of the United States, such title, right, privilege, or immunity must have been *specially set up or claimed at the proper time and in the proper way*. If it was not claimed in the trial court, and, therefore, by the law and practice of the State, as declared by its highest court, could not be considered by that court; or if it was not claimed in any form *before judgment* in the highest court of the State, it cannot be asserted in this court."

To the same effect is the decision in *Winona & St. Peter Land Co.* v. *State of Minnesota*, 159 *U. S.*, 540–541.

It has been repeatedly decided by this Court that it is the peculiar province and privilege of the State courts to construe their own statutes, and it is no part of the functions of this Court to review their decisions, except when specially authorized by statute. (*Adams* v. *Preston*, 22 *How.*, 473; *Congdon Mining Co.* v. *Goodman*, 2 *Black*, 574; *Scott* v. *Jones*, 5 *How.*, 243; *Smith* v. *Adsit*, 16 *Wall.*, 185; *Klinger* v. *Missouri*, 13 *Wall.*, 257; *Murray* v. *Gibson*, 15 *How.*, 421; *Nichols* v. *Levi*, 5 *Wall.* 433.)

It is apparent from an examination of the record in this case that the parties did not contemplate raising any Federal question when they prepared their statement of agreed facts and filed the same in

the Louisville Chancery Court. The counsel for the plaintiff in error at that time evidently had no thought of ever bringing the record in this case to the Supreme Court of the United States. The prosecution of this writ of error upon the record as made up was doubtless an *afterthought.* Under the authorities cited, a dismissal is asked; but if jurisdiction is entertained to determine this writ of error on its merits, this Court is referred to the reasoning found in the opinions of the three State courts as amply sufficient to authorize an affirmance of the judgment complained of.

All of which is respectfully submitted.

HENRY L. STONE,
City Attorney of the Defendant in Error.

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No. 709

166-709.

Office Supreme Court, U. S.
FILED.
MAR 31 1897
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SUPREME COURT OF THE UNITED STATES

The Louisville & Nashville Railroad Company . . . . . Plaintiff in Error,

vs.

The City of Louisville . . . . Defendant in Error.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

JAMES P. HELM,
HELM BRUCE,
Counsel for Plaintiff in Error.

H. W. BRUCE,
of Counsel.

F. C. NUNEMACHER PRESS, LOUISVILLE, KY.

Supreme Court of the United States.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ... *Plaintiff in Error,*

vs.

CITY OF LOUISVILLE, ... *Defendant in Error.*

REPLY BRIEF FOR PLAINTIFF IN ERROR.

Counsel for defendant in error raises the point, "no jurisdiction."

This is a tax case. It involves the liability of the railroad company to the City for taxes The railroad company having been compelled to pay the tax, and having paid a part of it under protest, seeks to recover the part thus paid under protest on the ground that the City had no lawful right to demand it. Of course the liability of the company for the tax, and the right of the City to retain it, *rest exclusively upon statute.* And the State court in upholding the City's right to the money, and in refusing to give the railroad company judgment for the same, *necessarily rendered a decision in favor of the validity of the statute under which the tax was claimed by the City* (for it was agreed that the tax had been paid under protest, and under an agreement that the question of right between the parties should be tested by this suit).

This statement alone, even if there were no other facts shown by the record, is sufficient to show the jurisdiction of

this court within the rule which it has often announced. Thus in Powell vs. Brunswick County, 150 U. S. 440, the very case upon which counsel for defendant in error seems mostly to rely, the court said:

> "If it appear from the record by a clear and necessary "intendment that the Federal question must have been "directly involved *so that the State court could not have "given judgment without deciding it, that will be sufficient.*"

Again, in Chicago Life Insurance Company vs. Needles, 113 U. S. 579, the court said:

> "The Supreme Court of Illinois did not in terms pass "upon the claim distinctly made there, as in the court of "original jurisdiction, that the statutes in question were in "derogation of rights and privileges secured to appellant "by the Constitution of the United States. But the final "judgment necessarily involved an adjudication of that "claim; for if the statutes, upon the authority of which "alone the Auditor of State proceeded, are repugnant to "the National Constitution, that judgment could not prop-"erly have been rendered. This court, therefore, has juris-"diction to inquire whether any right or privilege protected "by the Constitution of the United States has been upheld "or denied by the judgment below."

But not only is it evident from the record that the validity of the statute under which the tax was claimed by the City was necessarily involved in the litigation, and that the decision was necessarily in favor of such validity, but the record shows that the question of the validity of the statute, and as to its conflict with the Federal Constitution, was expressly raised before final judgment, and was expressly decided.

It is true that no express reference was made to the Constitution in the statement of agreed facts, which in this case

we may for the present concede, as claimed by opposing counsel, takes the place of pleadings; but, as we will presently show, this is not necessary. The agreed case does show that the only question submitted to the court for decision was the right of the City of Louisville to retain a certain tax which it had demanded, and *the only possible right to which of course rested upon the statute.* The statement of facts does not show what were the contentions of the contending parties upon this question. It is true, however, as will be seen from the opinions delivered by the State courts, that there were two questions made and considered and decided in the State courts. One was a question of construction; the other was a question of validity. The City contended that by a proper construction of the statutes involved it had a right to demand, receive and retain the tax in dispute. The railroad company on the other hand contended in the first place, that this was not a proper construction of the statute, but that by a proper construction of the statute the City had no right to demand this tax; and, in the second place, that if the City's construction was correct, then the statute as thus construed, was unconstitutional. These statutes and constitutions and conclusions of law were not expressly set forth in the statement of facts; but the questions were necessarily involved, and the opinions of the courts show they were considered and decided.

The Chancellor in his opinion (Record, p. 18) does not use the words "constitution" or "validity," but shows with distinctiveness that he intended to decide a question as to the validity of the statutes involved; and the first authority cited in the opinion is a Federal authority, Mining Co. vs. New York, 143 U. S. 313, which is cited in support of the proposition that the State may impose such burdens on a corporation as it may see fit.

From the judgment of the Chancellor an appeal was taken to the Superior Court of Kentucky (a court intermediate between the trial court and the court of last resort). This court had no jurisdiction of constitutional questions, so that

the constitutional question could not have been involved in that appeal, except in so far as it might bear on the question of construction. We relied in that court upon the well settled proposition that where a statute is fairly susceptible to two constructions, one of which would render it constitutional and valid and the other of which would render it unconstitutional and void, the court should give to it that construction which will render it constitutional and valid; and in this connection only we argued that the construction contended for by the city would make the statute unconstitutional. That such was our position in that court is shown by the Court's opinion, in which it speaks as follows:

> "It is not claimed that the provision of the charter "allowing a discount to taxpayers for prompt payment is "in itself invalid, but it is argued that unless it is so "construed as to allow railroad companies the same dis- "count, the discrimination will render it invalid as to such "companies. As to this we think it sufficient to say that "no constitutional question is involved. It is simply a "matter of construction." (Record, p. 22.)

Thus the court's opinion shows that we did insist that the city's construction of the statute would result in a "discrimination," which would invalidate the statute; though the Court seems not to have understood the effect of that upon the question of construction. And upon the question of construction it agreed with the Chancellor, and therefore affirmed his judgment.

This construction of the statute having been adopted, the railroad company then asked for a transfer of the case to the Court of Appeals, either by an order of transfer or an appeal, *on the sole and express ground that the statutes as construed by the court were contrary both to the Constitution of Kentucky and the* CONSTITUTION OF THE UNITED STATES, and that it desired to be heard upon that question (which it could not be

heard upon in the Superior Court). And, in order that its contention in this matter might be made a *matter of record*, so that there could be no dispute as to its claims, it filed written grounds for its motion, which were duly *entered of record* as follows:

> "This day came appellant, by counsel, and stated to the "court that it believes the statutes involved in this action, "as to the taxation of railroad property in the city of "Louisville, as construed by the court in its opinion lately "delivered herein, to be invalid and to be *in violation of* "*the constitutions* of the State of Kentucky and *of the* "*United States*, and that it desires to be heard on the "question of the validity of said statutes, and thereupon "moved the court to set aside its judgment, and the order "of submission herein and to transfer this action to the "Court of Appeals; and came defendant further by counsel "and moved the court to grant it an appeal from its judg- "ment herein to the Court of Appeals in the event the "court should overrule the preceding motions above set "forth." (Record, p. 24.)

This express statement was made part of the record, and as such was before the Court of Appeals when the case came before it for consideration under the appeal which the Superior Court granted.

The Court of Appeals in deciding the case delivered an opinion which shows expressly that the constitutional question, as well as the question of construction, was considered and decided. The opinion concludes as follows:

> ". . . . . it is plain we think, that the charter pro- "vision or the law in regard to the assessment, collection "and payment of the taxes of the citizen within the "municipality does not include railroads or such corporate "property, and equally apparent that the legislature in

"regard to these corporations *can enact* a different system "or mode of assessment and collection from that under- "which taxes are ordinarily collected, and the discount "allowed the citizen to encourage the prompt payment of "taxes *is not a discrimination* in his favor as against appel- "lant, *nor is it open to constitutional objection.*

"Judgment affirmed. Kentucky Railroad Tax Cases, "115 U. S."

It is thus seen that the court expressly decided that the statute was not open to constitutional objection. And if it be contended that the court may possibly have meant simply that the statute was not in violation of the Constitution of the *State*, then it is important to note that the authority cited by the court for the proposition is the Kentucky Railroad Tax Cases, *as decided by this Court.* Those cases were first decided by the Court of Appeals of Kentucky (81 Ky. 492), in which decision of course all questions of the validity of the statute under the Kentucky Constitution were considered and authoritatively and finally determined. And the case then came to this court solely upon a *federal question* to-wit, as to whether or not the statutes involved were in violation of the *Federal Constitution.* And it is this court's decision of this federal question which the Court of Appeals in the opinion delivered in the case at bar cites as authority upon the proposition that the statute now under consideration is not open to constitutional objection.

It therefore seems to us that, while there is no express averment in the statement of facts that the statutes involved were claimed to be in violation of the Federal Constitution, yet this record shows, and shows expressly, that this question was raised; that it was raised *before final judgment;* and that it was considered and decided by the court. And this is all that is required by the decisions of this court, upon which the profession have a right to rely in the preparation of their cases.

We note that counsel for the defendant in error lays special stress on the fact that the *pleadings* do not expressly state a federal question, and that in the statement of record wherein it is expressly stated that the railroad company claims the statute to be in violation of the Federal Constitution no *particular section* of the Constitution is pointed out. But it has been often held by this court that it is not necessary to do either of these things in order to make the record show a federal question.

In Murray vs. Charleston, 96 U. S. 441, this court said:

"In questions relating to our jurisdiction, undue im-
"portance is often attributed to the inquiry whether the
"pleadings in the State court expressly assert a right un-
"der the Federal Constitution. The true test is not
"whether the record exhibits an express statement that a
"federal question was presented, but whether such a ques-
"tion was decided, and decided adversely to the federal
"right. Everywhere in our decisions it has been held that
"we may review the judgment of a State court when the
"determination or judgment of that court could not have
"been given without deciding upon a right or authority
"claimed to exist under the Constitution, laws, or treaties
"of the United States, and deciding against that right."

In Bridge Proprietors vs. Hoboken, 1 Wallace, 142, the court said:

"It is objected, however, by the defendants, that the
"pleadings do not, in words, say that the statute is void be-
"cause it conflicts with the Constitution of the United
"States, and do not point out the special clause of the
"Constitution supposed to render the act invalid.

"It would be a new rule of pleading, and one altogether
"superfluous, to require a party to set out specially the pro-
"vision of the Constitution of the United States on which

"he relies for the action of the court in the protection of "his rights. If the courts of this country, and especially "this court, can be supposed to take judicial notice of "anything without pleading it specially, it is the Consti- "tution of the United States. And if the plaintiff and "defendant in their pleadings, make a case which neces- "sarily comes within some of the provisions of that instru- "ment, this court surely can recognize the fact without "requiring the pleader to say in words: 'This paragraph "of the Constitution is the one involved in this case.'"

So in Smith vs. Greenhow, 109 U. S. 670, the defendant in his rejoinder relied upon a certain statute to defeat plaintiff's right of recovery. Plaintiff simply demurred to the rejoinder; and subsequently on the question of jurisdiction, this court said:

"The demurrer in effect denies the validity of that law, "and upon the record no ground of its invalidity can be "inferred, except that it is avoided by the operation of that "provision of the Constitution of the United States which "forbids any State from passing laws which impair the obli- "gation of contracts. It therefore sufficiently appears upon "the record that the plaintiff's case arises under the Consti- "tution of the United States, within the rule as laid down "in Bridge Proprietors vs. Hoboken (1 Wallace 116-142)."

In Armstrong vs. Treasurer of Athens county, 16 Peters, 285, the court pointed out six different methods by which the record might be made to show the jurisdiction of this court; and only one of them referred to an express statement of the question in the pleadings.

In Furman vs. Nichol, 8 Wallace, 56, the court said:

"It is urged that the particular provision of the Consti- "tution, which the plaintiffs in error say has been violated

"in its application to their case, should be contained in the "pleadings; but this is in no case necessary."

In Spencer vs. Merchant, 125 U. S. 352, this court said:

"No specific mention of either constitutional provision "was necessary in order to entitle him to a decision of the "question by any court having jurisdiction to determine "it. The adverse judgment of the Supreme Court, affirmed "by the Court of Appeals of the State, necessarily involved "a decision against a right claimed under the fourteenth "amendment to the Constitution of the United States "which this court has jurisdiction to review."

It is perfectly manifest from repeated utterances of this court that the existence of a federal question may be shown by any part of the record *prior to final judgment;* and that there is no rule requiring it to be shown in any particular place in the record, or in any particular manner, or at any particular time, so it is prior to the final judgment.

Thus in Stewart vs. Kahn, 11 Wallace, 493, it was held to appear sufficiently when stated in a petition for review in the Supreme Court, by which is meant, as said by this court in Texas, &c., vs. Southern Pacific Co., 137 U. S. 54, not a petition for rehearing filed after the case had been decided by the Supreme Court, but a petition for review in the Supreme Court of the judgment of the lower court. And in the last named case the court manifestly approved the proposition that the question could be thus made to appear. And so we see that in Morrison vs. Watson, 154 U. S. 115, the court commented on the fact that no *reasons for the appeal* to the Supreme Court of the State were stated in the record, thus showing that the court had examined that portion of the record to see if the Federal question was there made to appear.

It is true this court has often held that the federal question cannot be raised for the first time by a petition for rehearing

in the Supreme Court of the State, but the reason for this is that it comes after judgment, and is too late. (See Loeber vs. Schroeder, 149 U. S. 585, and cases there cited.)

By way of showing further that this court has never required that the federal question should be made to appear in any particular place in the record, it is instructive to observe the different parts of the record, to which this court has itself looked for the appearance of such a question, as shown by opinions delivered by it at different times. Thus in Fowler vs. Lamson, 164 U. S. 252-255, the court manifestly treats it as sufficient that the federal question should be made to appear in some manner in the record in the State court "before the entry of final judgment in the case", referring for authority to Simmerman vs. Nebraska 116 U. S. 54. And in this last named case we see from the following portion of the opinion where the court looked to find such question. The court said:

> "It no where appears from this record, either in the "application for a change of venue, or in the objections to "the admissibility of evidence; to the charge of the court "as given, or to the refusals to charge as requested, or in the "motion for a new trial, the assignment of errors in the "Supreme Court of the State, or the opinion filed in that "court, that any Federal question was actually presented for "consideration, or in any way relied on before the final "judgment from which the writ of error has been taken. "Such being the case, we cannot take jurisdiction."

We note that counsel for defendant in error quotes certain language of this court to the effect that "the title, right, privilege or immunity thus relied on must be *specially set up or claimed in the State Court at the proper time in the proper way*". [Counsel italicizing the words here italicized.] This language of the court however it is to be observed applies only where there is some special "title, right privilege or

immunity" relied on, and has no application to a case where a party simply claims the benefit of that "equal protection of the laws" which is guaranteed by the Constitution to all persons. The words "specially set up or claimed", as found in the court's opinions, are quoted from the statute itself, where it is seen they only apply to the case of a "*title, right, privilege or immunity* specially set up or claimed by either party". They do not apply to the other classes of cases covered by the statute, to wit, (1) where the validity of a statute, &c., of the United States is called in question and the decision is against its validity, or (2) where the validity of a statute, &c., of a State is called in question on the ground of being repugnant to the Constitution, &c., of the United States, and the decision is in favor of its validity. This court by its language used in the first paragraph of the opinion in Texas, &c., Ry. Co. vs Southern Pacific Co., 137 U. S. 53, plainly recognizes the distinction between these classes of cases, and the manner in which the federal question may be severally raised in them.

Applying the principles gathered from the authorities cited to the case at bar, we do not see how there can remain a question of the jurisdiction of this court. We have already shown that the judgment upholding the tax necessarily decided in favor of the validity of the statute under which the tax was claimed. Then as to the contention of the railroad company, the Chancellor's opinion shows that "the ground of inequality in taxation" was "much relied upon by plaintiff's counsel." (Record 19.) Then the opinion of the Superior Court shows that it "was argued that unless it (the statute) is so construed as to allow railroad companies the same discount, the *discrimination* will render it *invalid* as to such companies." (Record 22.) Then there is the express statement *entered of record by order of court*, as the ground upon which either a transfer or an appeal to the Court of Appeals from the Superior Court was asked, that the statute as construed by the Superior Court was invalid and in viola-

tion both of the Constitutions of the State of Kentucky *and of the United States.* (Record 24). Then we have the express decision by the Court of Appeals that the statute as construed by the court "is not a *discrimination* in his favor as against appellant, nor is it open to *constitutional objection*". Citing as authority the Kentucky Railroad Tax Cases, 115 U. S., *which decided nothing but a Federal question*, to wit, as to whether or not a certain statute violated the fourteenth amendment to the Federal Constitution, guaranteeing to all persons equal protection of the laws, and prohibiting the taking of property without due process of law.

Though no particular section of the Constitution is pointed out in the record, yet the record does show, as we have just seen, that the railroad company claimed that the statutes involved produced "inequality in taxation," and again, that they constituted a "discrimination" against the railroad company; and that the statutes as thus construed were invalid and in violation of the Federal Constitution. No one could possibly doubt that the railroad company relied certainly upon the fourteenth amendment to the Constitution, which guarantees to all persons the equal protection of the laws, to protect it against this "discrimination," this "inequality of taxation," which the record shows it objected to throughout this proceeding.

It is true, as said by counsel for defendant, that the record does not show that defendant in the State court relied upon its charter as a *contract* prohibiting the imposition of any greater tax upon its property than should be laid upon other real property in the State; and if the invalidity of the statutes in question on the ground of *impairing the obligation of a contract* were the sole ground relied upon to show the jurisdiction of this court, the plaintiff in error might fail; but the existence of the question heretofore mentioned, to wit, the invalidity of the statute because of its violation of the constitutional guaranty of *equal protection of the laws*, is absolutely plain.

II.

But we respectfully submit that as the court undoubtedly has jurisdiction of the case by reason of the federal question as to the conflict between the statutes involved and the fourteenth amendment to the Federal Constitution, it has the right to decide any other *Federal question* which may be properly raised, even though the record does not show it was suggested in or considered by the State court; and therefore in the case at bar it may consider whether or not the statutes involved are invalid as *impairing the obligation of a contract*, and in conflict with the "contract clause" of the Constitution, even though the record does not show that question to have been made in the State Court, and though it may consider that the federal question which was made, as to the conflict with the fourteenth amendment, was properly decided.

Of course we know the court has often held that where it concludes that the *federal* question was properly decided by the State court, it will not examine the State court's determinations of *non-federal* questions; and there may be serious doubt as to the power of Congress to confer jurisdiction upon this court to decide such questions. But, when the court has jurisdiction of the case by reason of the existence of ANY *federal question*, duly made and decided in the State court, we see no good reason why the court should not decide EVERY *federal question* it may find in the case, though it may not see that it was relied on in the State court.

Counsel says, however, the existence and contents of the charter of the Railroad Company, granted in 1850, containing the provision that its property shall never be taxed beyond the rate imposed on real estate, and which we say is a contract violated by the statutes now under consideration, are not shown by the record, and hence could not have been properly considered by the State court, and can not now be considered by this court. But proof of an act of the legisla-

ture of Kentucky, whether general or special, is not required. A statute of the State provides: "The several courts of the Commonwealth shall take *judicial notice of all acts* and resolutions of the General Assembly." (General Statutes, Ch. 37, Sec. 1; present Kentucky Statutes, Sec. 1624.) It is true, however, that as a *rule of pleading* the Code of Practice seems to contemplate the *pleading* of private statutes by reference to their titles. Under the title, "*General Rules of Pleading*," the Code provides:

"1. Neither the evidence relied on by a party, nor "presumptions of law, nor facts of which judicial notice "is taken, excepting private statutes, shall be stated in a "pleading.

"2. In pleading a private statute, it shall be sufficient "to refer to it by stating its title and the day on which it "became a law." (Code, sec. 119; sub. sec. 1 and 2.)

But in the case at the bar there are no pleadings, and hence the "Rules of Pleading" prescribed by the Code do not apply. The purpose of the law in allowing parties to make an "agreed case," under the statutory provisions quoted in the brief for defendant in error, is to save time and labor and expense by waiving formalities; stating to the court such facts bearing on the controversy as are not judicially known to the court, and submitting the question to be decided. The technical rules of pleading, whether prescribed by the common law or by statute, and the rule that there can be no variance between the pleadings and the proof, have no application to such a proceeding.

Now, in the case at bar the parties being desirous of having their exact rights determined, each party being willing to do what was right, and neither party desiring more than was right, submitted this case to the court. They stated that the Louisville & Nashville Railroad Company was a corporation, though even that statement was superfluous—and made more

from force of habit than otherwise—for the Court knew that fact judicially. They stated the facts as to the time when the assessment was made, when the company was notified, its tender of payment, &c., and asked the Court to decide whether or not the railroad company was entitled to a discount off of the face of its tax bill at the time it tendered payment. But it was not necessary to inform the Court when the company's charter was granted, or what were its provisions, any more than it was necessary to tell the Court the provisions of the taxing statutes, or what the Court of Appeals had held to be the law in a particular case. The Court took judicial notice of all these things, and the ready means of information, to which it had the right to refer, was at hand in the shape of the published acts of the General Assembly and reports of the Court's decisions. And, as the parties had, for mutual convenience, waived the technical rules of pleading, the Court had a right to determine the question, thus informally submitted to it, on the facts as stated and such other relevant facts as the Court had judicial knowledge of.

We submit, therefore, that the railroad company's charter was properly before the State court, and therefore now properly before this court; and that the question of its true meaning and effect, and as to whether or not the tax statutes under consideration violate its obligation, is now before this court for decision, as well as the question of the conflict between these statutes and the fourteenth amendment to the Federal Constitution.

But it is said that this contract question is not suggested in the assignment of errors filed in the clerk's office of the Court of Appeals in connection with the writ of error from this court. That, however, makes no difference. If no assignment of errors had been filed there at all, it would have been sufficient to make such an assignment in the brief in this court (School Dist. vs. Hall, 106 U. S. 428; Mussina vs. Cavazos, 6 Wall. 359), and this being true it is certainly per-

missible in writing the brief to add to the assignment of errors filed in the clerk's office. Such a proceeding could not possibly affect any one injuriously. The assignment filed in the clerk's office is filed after the decision of the State court has become final. It can not, therefore, possibly influence or in any wise affect that decision. And, as the brief of plaintiff in error is printed and filed several days before that of defendant in error is required to be filed (in this case several months before), and shows this Court the errors relied on, it is impossible to see how an addition in the brief to the assignment of errors filed in the clerk's office can possibly affect any one injuriously.

III.

Referring again to a suggestion at the close of our original brief (p. 19) that there may be said to be difficulty in applying exactly the same rule as to discounts to railroad companies as to others, because the taxes do not become payable exactly at the same time, we desire to add what we failed to suggest in the original brief in that connection, viz., that if this renders it impracticable to give railroad companies the benefit of the same rebate that all others enjoy, the inevitable effect is *to make the whole act as to the taxation of railroads in the City of Louisville invalid.* As said in our original brief, the State cannot, by merely varying the time of payment, cut off one class of persons from all possibility of taking advantage of the reduced rate allowed to every other person and class of persons in the community. And if the State attempts to do so, and it is not possible to secure practical equality—though we think it is possible in this case, in the manner suggested in our brief—then the result is the whole act must fail. The plaintiff in error, however, does not desire this result; it is perfectly willing to pay the taxes due from it on the same basis that all other owners of property in the city pay; and it has paid that part of its taxes without any pro-

test, and does not seek or desire to recover it. It only desires and seeks to recover that part of the tax which represents the discount that is allowed to all others.

Respectfully submitted,

JAMES P. HELM,
HELM BRUCE,
Counsel for Plaintiff in Error.

H. W. BRUCE,
of Counsel.

CITY HALL

NORTH

PARK

RD. COURT

POST OFFICE &
U S COURT

CALVERT STREET

COURT HOUSE

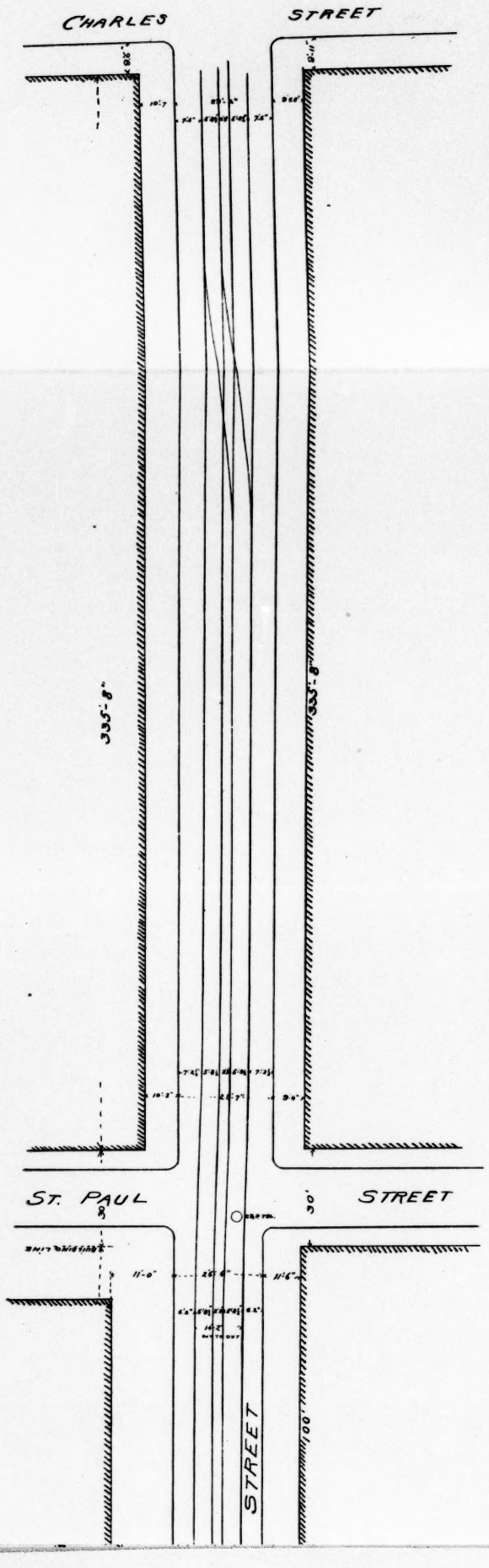
EAST LEXINGTON STREET

EAST LEXINGTON

DAVIS STREET

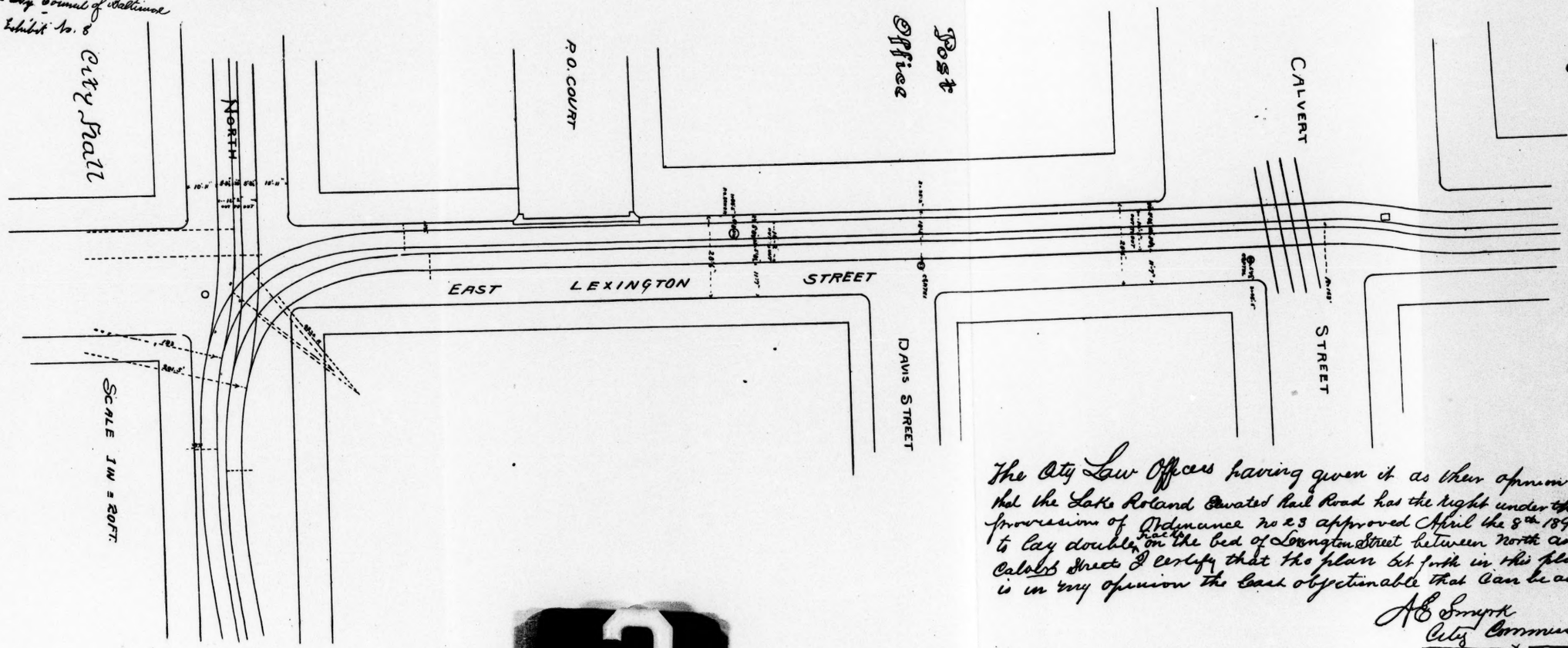
COURTLAND ST.

SCALE 1IN - 20FT.


CHARLES
STREET
335'-8"
335'-8"
ST. PAUL
STREET
STREET

Endorsed
A 368
1892
Lake Roland Elevated Railroad
vs
Mayor & City Council of Baltimore
Pltf's Exhibit No. 8

No. 878
Mayor &c.
vs
B.T.&.G.
ft 230

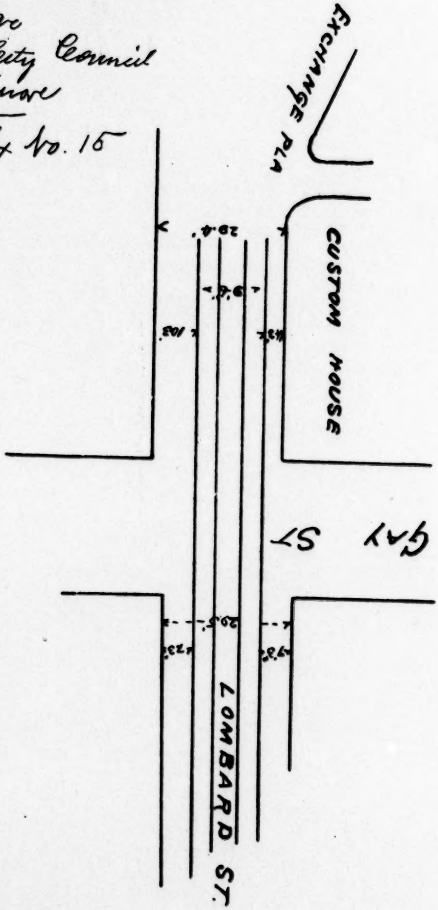


The City Law Offices having given it as their opinion that the Lake Roland Elevated Rail Road has the right under the provisions of Ordinance no 23 approved April the 8th 1891 to lay double tracks on the bed of Lexington Street between North and Calvert Streets I certify that the plan set forth in this plat is in my opinion the least objectionable that can be adopted.

A B Smyth
City Commissioner

2

Endorsed: A. 381
1892
Lake Roland Elevated Co.
vs
Mayor & City Council
of Baltimore
Compts Ex No. 15



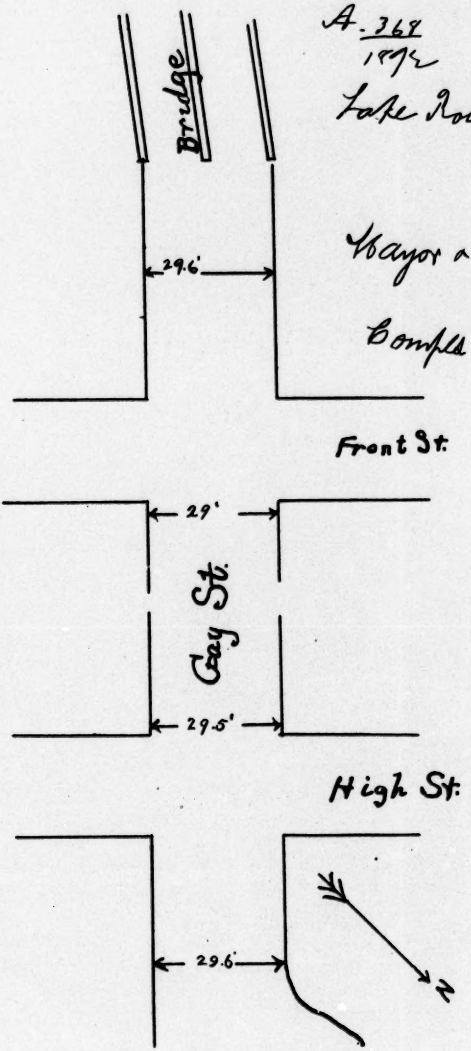
No 878
Mayer &c
v.
B.T. & G. Co.
} h. 232

Endorsed

A. 368
1874

Lake Roland Elevated Co
vs
Mayor & City Council

Compts Exp. No. 14



No. 878
Mayor
vs
B. T. Vly. Co.
} p. 231

Endorsed
A 369
189
Lake Roland Elevated Railway
vs
Mayor & City Council
of Baltimore and
A. E. Smyth
Defendants Exhibit No. 3

No 878 }
Mayor &c } A 233
vs
B. T. & Co.

CALVERT ST.

DAVIS ST.

NORTH ST

LEXINGTON STREET

MONUMENT SQUARE

NORTH ST.

COURTLAND ST.

CALVERT ST.

ST PAUL STREET.

LEXINGTON STREET.

MONUMENT SQUARE

CHARLES STREET

LEXINGTON STREET

ST PAUL STREET

Building Line
Outer edge of Kerb.
do do of Gutter.
do do of outer rails
Outer projection of cars

Scale 1 inch = 15 feet
J. P. Swadley
surveyor

No. 216.
L.I.W.S.Co. } p 65 a
Brooklyn

Photo-lithograph of Exhibit No. 2, Map No .1, October 6th, 1892. 17 44/100 acres land, Pumping Station, Wells, &c. See record, pages 64 and 65.

Ex. No. 2
Oct. 6 1892
Map No. 1

MAP OF PROPERTY OF THE
"LONG ISLAND WATER
PUMPING STATION."

DUMONT
BLAKE
SUTTER
LOGAN
BELMONT
ST.
FOUNTAIN
AVE.
CRYSTAL
ROAD
CHESTNUT
HEGEMAN
NEW LOTS
726
724
727
729
947
16 INCH MAIN SUPPLY
L.I.W.S.CO.
"BETTS CREEK"

Ex. No 2.
Dec 6 1892
Map No. 1

MAP PROPERTY OF THE "LONG ISLAND WATER SUPPLY COMPANY."

PUMPING STATION.

Located situated on the 26th Ward Brooklyn, Kings Co., N.Y. upon which is erected the wells, engine house, boiler house, engineers residence, out houses, coal sheds, Machinery &c

Total area 17 44/100 Acres

Original survey by Joseph T. Palmer, City Surveyor
This Map Drawn by
Joseph T. Palmer
City Surveyor
May 1892

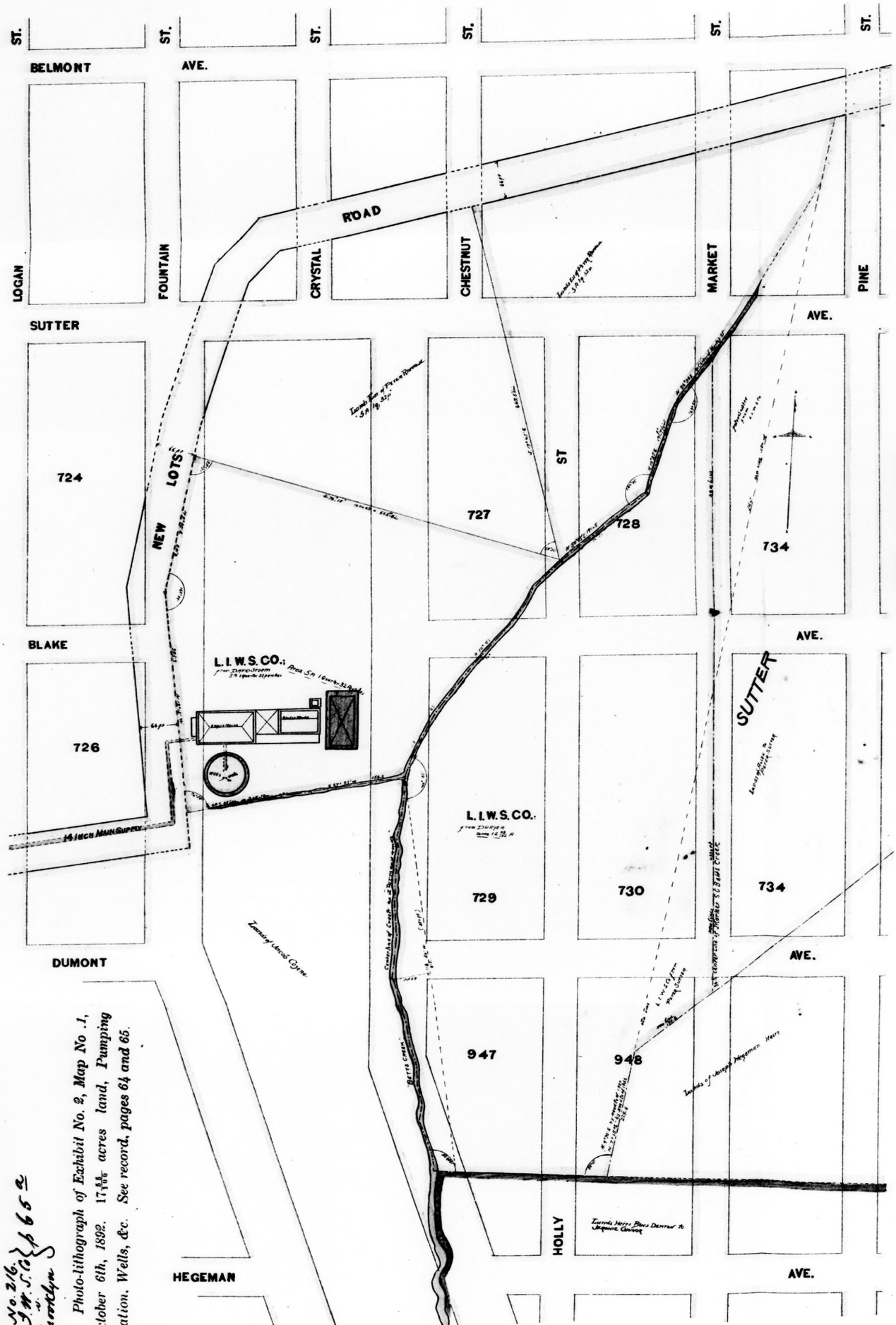


Photo-lithograph of Exhibit No. 2, Map No .1, October 6th, 1892. 17 44/100 acres land, Pumping Station, Wells, &c. See record, pages 64 and 65.

No. 2/6
E.D.W.S.Co.
Brooklyn

No. 216.
L.I.W.S.Co } 65 L
v.
Brooklyn.

Ex. No. 3
Oct. 6 1897
Map No. 2

MAP PROPERTY

OF THE

"LONG ISLAND WATER SUPPLY COMPA

RESERVOIR AND LANDS,

Situated partly in the 26th WARD City of BROOKLYN, County of Kings, and partly in the Town of NEWTOWN, County of QUEENS, and State of New York, comprising a total area of

Surveyed and Map by
Augt F. Palmer
City Surveyor
May 1892

JAMAICA AVE.

SUNNY SIDE

HENDRIX STREET

HIGHLAND BOULEVARD

BLOCK No. 248

BLOCK No. 249

BLOCK No. 251

BLOCK No. 250

Lands of Dr F Miller

Total old line N 25° 33' W 1687 a/ft

L I W S Co to Dr F Miller

Elevation 60.00 ft

S 61° 59' W 202.6 ft

202.6 ft

Jo Herbert C. Smith

Lands of Schenck & others and Shevlin to purchase L I W S Co

Total old line N 25° 20 W 1687 o ft

(the Lands of J. Schenck (Town C) and Henry Miller (Newtown))

Elevation 150 ft above mean high tide

Dr F MILLER TO L. I. W. S. Co

S 36° 0' E 540'

S 36° 0' E 540'

N 54° W 300 ft

S 54° 0' E 540'

N 54° W 300 ft

S 36° 0' E 540'

6

PHOTOLITHOGRAPH

OF EXHIBIT No. 3,

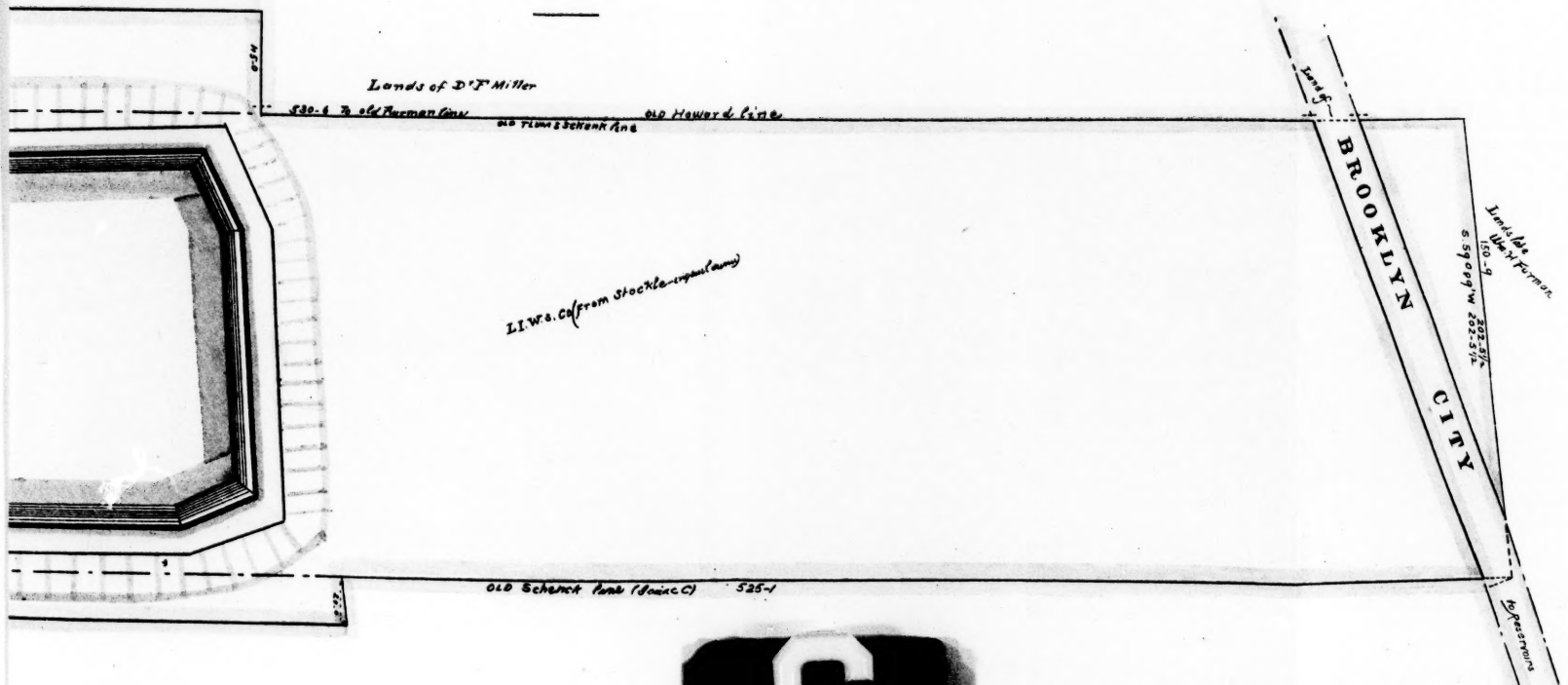
OCTOBER 6, 1892.

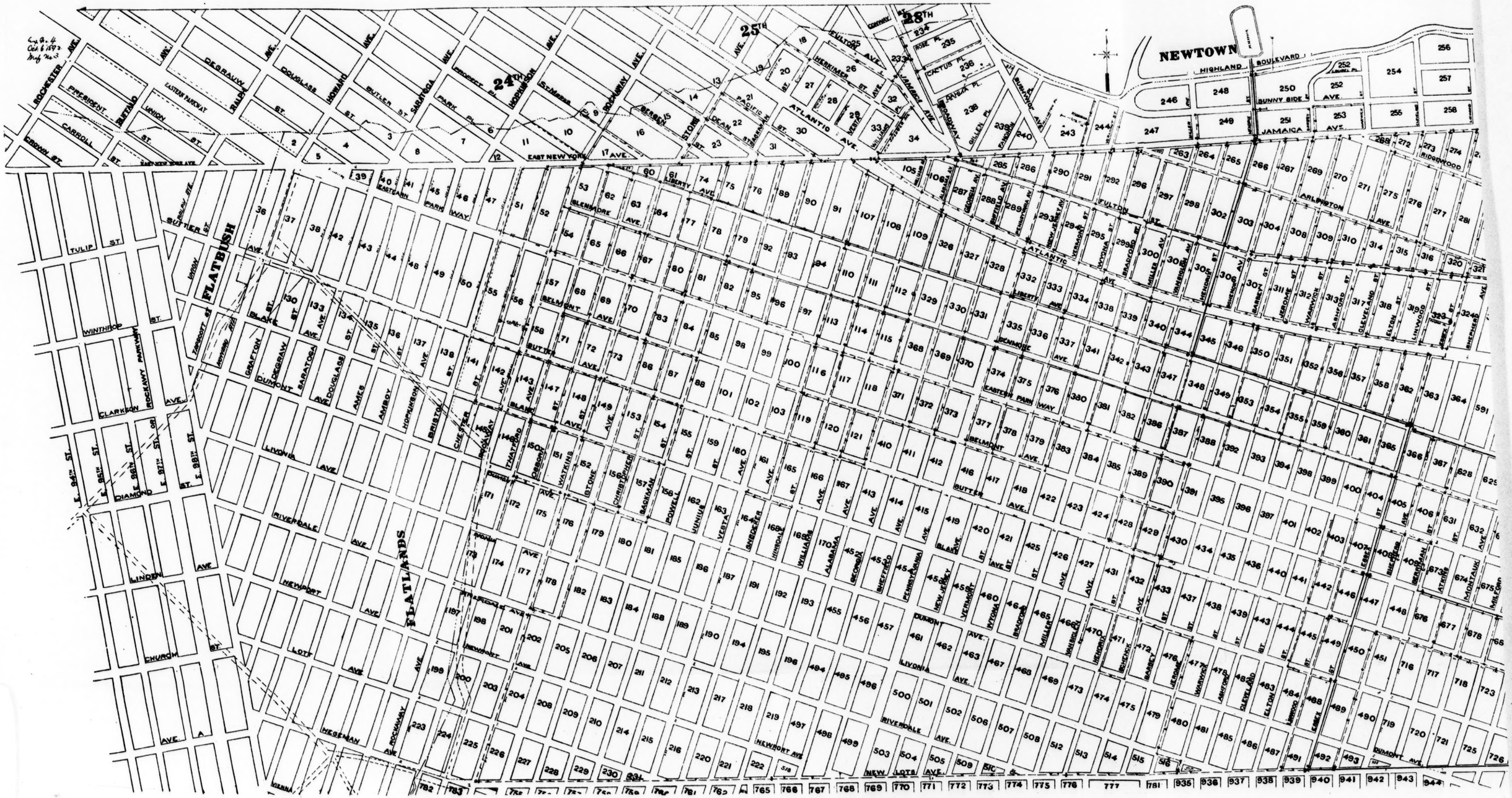
MAP NO. 2, RESERVOIR, LAND, ETC.,

Mentioned in Record, Page 65.

ANY:"

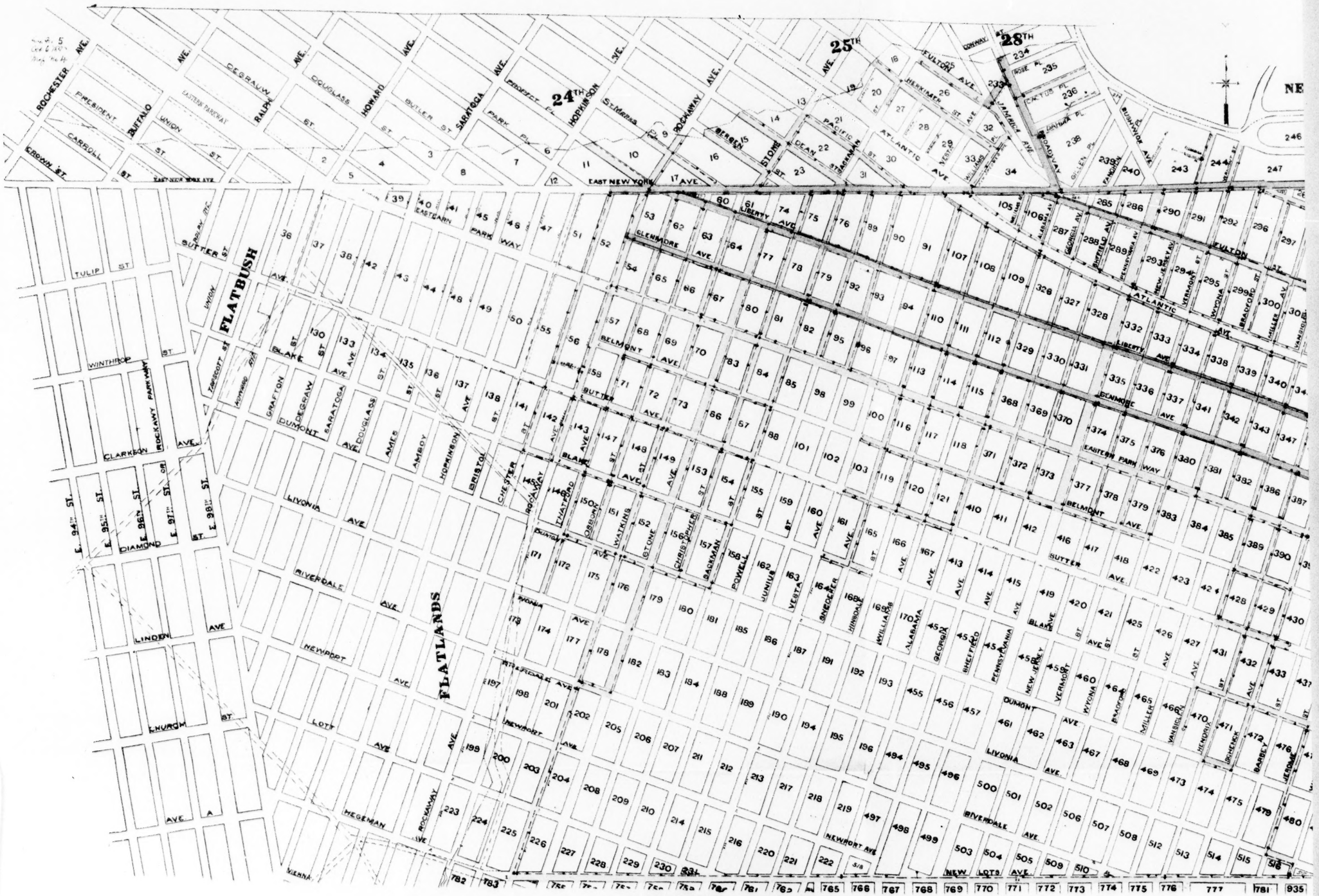
~~Total area 6 80/100 Acres.~~

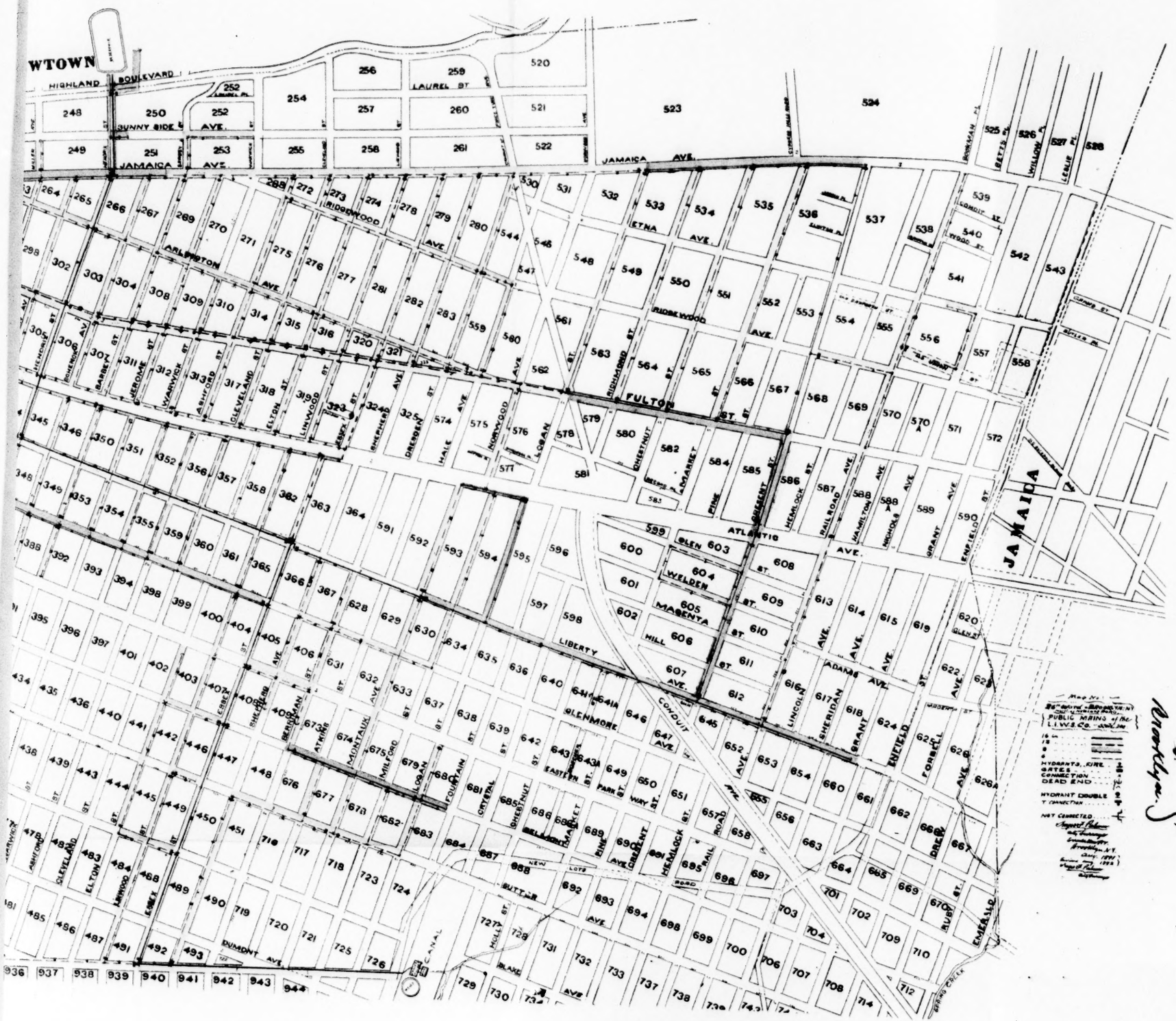



NEWTOWN
HIGHLAND BOULEVARD
JAMAICA AVE.
SUNNY SIDE
FLATBUSH
FLATLANDS
EAST NEW YORK
ATLANTIC AVE.
FULTON ST.
LIBERTY AVE.
PARK WAY
BELMONT AVE.
BLAKE AVE.
DUMONT AVE.
LIVONIA AVE.
NEWPORT AVE.
RIVERDALE AVE.
SUTTER AVE.
ROCKAWAY AVE.
ROCKAWAY PARKWAY
CROWN ST.
CARROLL ST.
EASTERN PARKWAY
PRESIDENT ST.
UNION ST.
TULIP ST.
WINTHROP ST.
CLARKSON AVE.
DIAMOND ST.
LINDEN AVE.
CHURCH AVE.
AVE. A
E. 94TH ST.
E. 95TH ST.
E. 96TH ST.
E. 97TH ST.
E. 98TH ST.
24TH AVE.
25TH AVE.
28TH AVE.
17 AVE.
ARLINGTON AVE.
RIDGEWOOD
NEW LOTS AVE.

Photolithograph of Exhibit No. 4, October 6, 1892. Map No. 8, indicating streets in the entire system of the L. I. W. S. Co. mentioned in Record, Page 66.

no. 216
L. I. W. S. Co.
v.
Brooklyn
} p. 66a


FLATBUSH
FLATLANDS
EAST NEW YORK
24TH
25TH
28TH
ROCHESTER AVE.
BUFFALO
RALPH AVE.
HOWARD AVE.
SARATOGA AVE.
ROCKAWAY AVE.
FULTON AVE.
ATLANTIC
LIBERTY AVE.
GLENMORE AVE.
BELMONT AVE.
BUTLER
EASTERN PARKWAY
PARK WAY
TULIP ST
WINTHROP ST
CLARKSON AVE.
ROCKAWAY PARKWAY
DIAMOND ST
LINDEN AVE
CHURCH ST
AVE A
VIENNA
RIVERDALE AVE
NEWPORT AVE
LOTT AVE
HEGEMAN
LIVONIA AVE
DUMONT AVE
BLAKE AVE
SUTTER
GRAFTON
DEGRAW
SARATOGA
DOUGLASS
AMES
AMBOY
HOPKINSON
BRISTOL
CHESTER
ROCKAWAY
VERMONT
BRADFORD
MILLER
VANSICLEN
BARBEY
JEROME
NEW LOTS AVE



Photolithograph of Exhibit No. 5, October 6, 1892. Map No. 4, indicating location and dimensions of Pipes, etc., mentioned in Record, Page 66

No. 216
C. J. M. & S. Co.
Brooklyn.

No. 216 L. I. W. S. Co. Brooklyn. } p. 66

EXHIBIT No. 6.

STATEMENT showing Names of Streets upon which the Long Island Water Supply Co.'s Pipes are Laid, with Size of same, and number of Lineal feet, also number of Gates placed thereon, and the number of Fire Hydrants with location of same. As per examination made by NOYES F. PALMER, City Surveyor, August, 1892.

STREET OR AVENUE.	DIRECTION.	SIDE OF STREET.	FIRE HYDRANTS.	GATES.					CONNECTIONS.	LINEAL FEET OF PIPE.				
				6 IN.	8 IN.	12 IN.	16 IN	TOTAL		6 IN.	8 IN.	12 IN.	16 IN.	TOTAL.
Atlantic Avenue,	E. to W.	North	21	6				6	14	5,773				5,773
" "	"	South	25		5			5	18		6,536			6,536
Alabama "	N. to S.	West	7	5	2			7	6	1,920	1,092			3,012
Ashford Street,	"	East	7	5				5	6	2,953				2,953
Atkins "	"	"	1	1				1	2	473				473
Arlington Avenue,	E. to W.	South	15	6				6	7	4,194				4,194
Bradford Street,	N. to S.	East	5	4				4	3	2,505				2,505
Barbey "	"	"	9	7				7	6	3,476				3,476
Berriman "	"	"	3	1				1	3	1,421				1,421
Bergen "	E. to W.	North	1						1	622				622
Broadway,	"	S-N	2		3			3	2		1,284			1,284
Belmont Avenue,	"	South	24	6	2			8	17	5,071	1,295			6,366
Blake "	"	"	15	4				4	11	3,917				3,917
Chester Street,	N. to S.	West	5	2				2	3	2,302				2,302
Christopher St.,	"	"	7	6				6	5	3,457				3,457
Cleveland "	"	E-W	8	6				6	5	3,108				3,108
Chestnut "	"	East	3	2				2	2	1,955				1,955
Cactus Place,	"	"		1				1	1	540				540
Crescent Street,	"	West	11		4			4	5		4,222			4,222
Dresden "	"	East	2	2				2	3	1,555				1,555
Dean Street,	E. to W.	North	2	1				1	2	1,066				1,066
Dahlia Place,	"	South	2	1				1	1	684				684
Dumont Avenue,	"	"	6	3				3	6	1,627				1,627
Elton Street,	N. to S.	East	10	6				6	7	4,218				4,218
Essex "	"	"	12	2		2	1	5	10	1,549		1,475	3,345	6,369
Evergreen Place,	E. to W.	South	1	1				1	1	320				320
East N. Y. Avenue,	"	"	10		6			6	12		3,927			3,927
Etna Avenue,	"	"							1	347				347
Eastern Parkway,	"		23	7				7	13	6,921				6,921
Fulton Avenue,	"	"	1						1	722				722
Fulton Street,	"	North	29		3	4		7	28		3,559	4,819		8,378
Georgia Avenue,	N. to S.	East	5	2				2	3	2,493				2,493
Glen Street,	E. to W.	South	1						1	574				574
Glenmore Avenue,	"	"	34	1	9			10	21	1,075	8,374			9,449
Hinsdale Street,	N. to S.	East	6	6				6	4	2,559				2,559
Hendrix "	"	E-W	9	4	1		3	8	12	3,074	772		2,836	6,682
Hale Avenue,	"	East	2	1				1	2	724				724
Herkimer Street,	E. to W.	North	2							1,294				1,294
Highland Boulevard	"	South		1				1	1	520				520
Junius Street,	N. to S.	East	3	1				1	2	1,587				1,587
Jerome "	"	"	11	6				6	6	3,463				3,463
Jamaica Avenue,	E. to W.	South	26	3	2			5	25	5,776	3,074			8,850
Linwood Street,	N. to S.	East	14	10				10	10	6,335				6,335
Logan "	"	"	8	2	1			3	6	2,447	1,191			3,638
Liberty Avenue,	E. to W.	N-S	46	1	8		1	10	16	1,000	9,399		2,246	12,645
Livonia "	"	South	1						2	245				245
Miller "	N. to S.	East	6	6				6	3	3,180				3,180
Montauk "	"	"	6	2				2	3	2,803				2,803
Milford Street,	"	"	4	2				2	4	1,888				1,888
Market "	"	"	6	2				2	4	2,293				2,293
New Jersey Ave.,	"	"	7	7				7	4	3,413				3,413
Norwood "	"	"	1	1				1	2	832				832
Nichols "	"	West	2						2	464				464
New Lots Road,	E. to W.	North	30	4				4	3	7,936			2,834	9,970
Osborn Street,	N. to S.	West	6	5				5	4	3,021				3,021
Powell "	"	East	3	3				3	2	1,477				1,477
Pennsylvania Ave.	"	"	6	7				7	7	2,842				2,842
Prospect Place,	E. to W.	North	1						1	605				605
Pacific Street,	"	"	2	1				1	1	1,154				1,154
Rockaway Avenue	N. to S.	West	8	4				4	8	3,010				3,010
Richmond Street,	"	East	3	2				2	2	1,846				1,846
Railroad Avenue,	"	"	10	2				2	6	4,436				4,436
Ridgewood "	E. to W.	South	8	4				4	5	2,496				2,496
Riverdale "	"	North	1	1				1	2	295				295
Stone "	N. to S.	East	10	4				4	5	4,978				4,978
Sackman Street,	"	"	8	6				6	5	3,760				3,760
Schedeker Avenue,	"	"	7	5				5	5	3,201				3,201
Sheffield "	"	"	6	6				6	5	2,664				2,664
Schenck "	"	"	11	7				7	9	5,804				5,804
Shepherd "	"	E-W	11	6				6	7	4,175				4,175
St. Mark's Place,	E. to W.	North	2						1	704				704
Sunnyside Ave.,	"	South	2		1			1	2	504	150			654
Sutter "	"	North	18	7				7	17	4,846				4,846
Thatford "	N. to S.	East	7	5				5	5	3,598				3,598
Union Street,	E. to W.	North							2	496				496
Vermont Street,	N. to S.	East	7	4				4	4	3,553				3,553
Van Sicklen Ave.,	"	"	9	8				8	7	4,374				4,374
Vesta Avenue,	"	"			2			2	2		280			280
Watkins Street,	"	"	10	5				5	8	5,938				5,938
Williams Avenue,	"	"	6	4				4	5	2,407				2,407
Wyona Street,	"	"	7	6				6	6	3,103				3,103
Warwick Street,	"	"	4	6				6	6	2,221				2,221
Williams Place,	"	"	1	2				2	1	637				637
Welden Street.	E. to W.	South	1						1	574				574
		Totals.	672	257	49	6	5	317	479	197,390	45,155	3,294	10,461	259,300

or 49 miles and 580 lineal feet

Of the above hydrants 15 are double nozzle.

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EXHIBIT No. 3. October 25th, 1892.

Statement showing Estimated Income, Expenses, etc., and Net Earnings of the LONG ISLAND WATER SUPPLY COMPANY, from 1893 to 1931, both inclusive, the estimate being based on the income, etc., of the Company for the year ending April 30, 1892.
Compiled by Francis Gottsberger, Public Accountant.

Year Ending May 1st.	Number of Consumers at beginning of year.	Number of new Consumers during year.	Number of Fire Hydrants in operation.	Receipts from Private Consumers.	Receipts from City of Brooklyn for Hydrants.	Total Gross Receipts.	Operating Expenses Excluding Taxes and Interest on Bonds.	Net Receipts, not including Taxes and Interest on Bonds.	TAXES. City.	TAXES. State, Etc.	Net Receipts, not including Interest on Bonds.	Deduct Interest on Bonds.	Net Earnings.	Sinking Fund for retiring Bonds.	Interest on same compounded at 3 per cent per annum.	Net Income.	Interest on Floating Debt.	Payments on Floating Debt.	Appropriations for Extensions.	Surplus over all Expenses and Extensions.	Year Ending May 1st
1893	4,666	800	592	65,575.80	30,970.00	96,545.80	12,699.93	83,845.87	5,200.00	1,200.00	77,445.87	30,000.00	47,445.87	25,000.00		22,445.87	3,600.00		17,000.00	1,845.87	1893
1894	5,466	859	792	74,882.60	36,220.00	111,102.60	14,000.00	97,102.60	5,850.00	1,200.00	90,052.60	30,000.00	60,052.60	25,000.00	750.00	35,052.60	3,600.00		30,000.00	1,452.60	1894
1895	6,316	900	892	85,122.60	39,720.00	124,842.60	16,000.00	108,842.60	5,850.00	1,200.00	101,792.60	30,000.00	71,792.60	25,000.00	1,522.50	46,792.60	3,600.00		42,000.00	1,192.60	1895
1896	7,216	900	992	95,112.60	43,220.00	138,332.60	16,000.00	122,332.60	6,500.00	1,200.00	114,632.60	30,000.00	84,632.60	25,000.00	2,318.17	59,632.60	3,600.00		51,000.00	5,032.60	1896
1897	8,116	900	1,092	105,102.60	46,720.00	151,822.60	18,000.00	133,822.60	6,500.00	1,200.00	126,122.60	30,000.00	96,122.60	25,000.00	3,137.72	71,122.60	3,600.00	15,000.00	50,000.00	2,522.60	1897
1898	9,016	900	1,092	115,092.60	46,720.00	161,812.60	18,000.00	143,812.60	7,800.00	1,200.00	134,812.60	30,000.00	104,812.60	25,000.00	3,981.85	79,812.60	2,700.00	15,000.00	50,000.00	12,112.60	1898
1899	9,916	900	1,192	125,082.60	50,220.00	175,302.60	20,000.00	155,302.60	8,450.00	1,200.00	145,652.60	30,000.00	115,652.60	25,000.00	4,851.31	90,652.60	1,800.00	30,000.00	50,000.00	8,852.60	1899
1900	10,816	850	1,292	134,267.60	53,720.00	187,987.60	22,000.00	165,987.60	9,100.00	1,200.00	155,687.60	30,000.00	125,687.60	25,000.00	5,746.85	100,687.60			75,000.00	25,687.60	1900
1901	11,666	850	1,392	143,702.60	57,220.00	200,922.60	26,000.00	174,922.60	9,100.00	1,200.00	164,622.60	30,000.00	134,622.60	25,000.00	6,669 25	109,622.60			75,000.00	34,622.60	1901
1902	12,516	850	1,492	153,137.60	60,720.00	213 857.60	28,000.00	185,857.60	9,750.00	1,450.00	174,657.60	15,000.00	159,657.60	10,000.00	119.33	149,657.60			100,000.00	49,657.60	1902
1903	13,366	850	1,592	162,572.60	64,220.00	226,792.60	29,000.00	197,792.60	10,000.00	3,325.00	184,467.60	15,000.00	169,467.60	10,000.00	422.91	159,467.60			100,000.00	59,467.60	1903
1904	14,216	850	1,592	172,007.60	64,220.00	236,227.60	30,000.00	206,227.60	10,500.00	3,325.00	192,402.60	15,000.00	177,402.60	10,000.00	735.59	167,402.60				167,402.60	1904
1905	15,066	750	1,592	179,832.60	64,220.00	244,052 60	32,000.00	212,052.60	11,150.00	4,575.00	196,327.60	15,000.00	181,327.60	10,000.00	1,057.66	171,327.60				171,327.60	1905
1906	15,816	750	1,592	188,157.60	64,220.00	252,377.60	32,000.00	220,377.60	11,500.00	4,575.00	204,302.60	15,000.00	189,302.60	10,000.00	1,389.39	179,302.60				179,302.60	1906
1907	16,566	750	1,592	196,482.60	64,220.00	260,702.60	34,000.00	226,702.60	12,000.00	5,200.00	209,502.60	15,000.00	194,502.60	10,000.00	1,731.07	184,502.66				184,502.60	1907
1908	17,316	750	1,592	204,807.60	64,220.00	269,027.60	34,000.00	235,027.60	12,500.00	5,200.00	217,327.60	15,000.00	202,327.60	10,000.00	2,083.00	192,327.60				192,327.60	1908
1909	18,066	750	1,592	213,132.60	64,220.00	277,352.60	36,000.00	241,352.60	13,000.00	5,200.00	223,152.60	15,000.00	208,152.60	10,000 00	2,445.49	198,152.60				198,152.60	1909
1910	18,816	650	1,592	219,847.60	64,220.00	284,067.60	38,000.00	246,067.60	13,650.00	5,825.00	226,592.60	15,000.00	211,592.60	10,000.00	2,818.86	201,592.60				201,592.60	1910
1911	19,466	650	1,592	227,062.60	64,220.00	291,282.60	40,000.00	251,282.60	14,300.00	5,825.00	231,157.60	15,000.00	216,157.60	10,000.00	3,203.42	206,157.60				206,157.60	1911
1912	20,116	650	1,592	234,277.60	64,220.00	298,497.60	42,000.00	256,497.60	14,950.00	5,825.00	235,722.60	15,000.00	220,722.60	10,000.00	3,599.53	210,722.60				210,722.60	1912
1913	20,766	650	1,592	241,492.60	64,220.00	305,712.60	42,000.00	263,712.60	15,600 00	5,825.00	242,287.60	15,000.00	227,287.60	10,000.00	4,007.51	217,287.60				217,287.60	1913
1914	21,416	650	1,592	248,707.60	64,220.00	312,927.60	44,000.00	268,927.60	16,250.00	6,450.00	246,227.60	15,000.00	231,227.60	10,000.00	4,427.74	221,227.60				221,227.60	1914
1915	22,066	500	1,592	253,507.60	64,220.00	317,727.60	44,000.00	273,727.60	16,900.00	6,450.00	250,377.60	15,000.00	235,377.60	10,000.00	4,860 57	225,377.60				225,377.60	1915
1916	22,566	500	1,592	259,057.60	64,220.00	323,277.60	46,000 00	277,277.60	17,550.00	6,450.00	253,277.60	15,000.00	238,277.60	10,000.00	5,306 39	228,277.60				228,277.60	1916
1917	23,066	500	1,592	264,607.60	64,220.00	328,827.60	46,000.00	282,827.60	18,200.00	6,450.00	258,177.60	15,000.00	243,177.60	5,000.00	5,765.58	238,177.60				238,177.60	1917
1918	23,566	500	1,592	270,157.60	64,220.00	334,377.60	48,000.00	286,377.60	18,200.00	6,450.00	261,727.60	15,000.00	246,727.60		6,088.55	246,727.60				246,727.60	1918
1919	24,066	500	1,592	275,707.60	64,220.00	339,927.60	48,000.00	291,927.60	18,200.00	6,450.00	267,277 60	15,000.00	252,277.60		6,271.20	252,277.60				252,277.60	1919
1920	24,566	400	1,592	279,647.60	64,220.00	343,867.60	50,000.00	293,867.60	18,200.00	7,075.00	268,592.60	15,000.00	253,592.60		6,459.34	253,592.60				253,592.60	1920
1921	24,966	400	1,592	284,087.60	64,220.00	348,307.60	50,000.00	298,307.60	18,200.00	7,075.00	273,032.60	15,000.00	258,032.60		6,653.12	258,032.60				258,032.60	1921
1922	25,366	400	1,592	288,527.60	64,220.00	352,747.60	52,000.00	300,747.60	18,850.00	7,075.00	274,822.60	15,000.00	259.822.60		6,852.71	259,822.60				259,822.60	1922
1923	25,766	400	1,592	292,967.60	64,220.00	357,187.60	52,000.00	305,187.60	19,500.00	7,075.00	278,612.60	15,000.00	263,612.60		7,058.29	263,612.60				263,612.60	1923
1924	26,166	400	1,592	297,407.60	64,220.00	361,627.60	54,000.00	307,627.60	20,150.00	7,700.00	279,777.60	15,000.00	264,777.60	395.06	7,270.04	264,382.54				264,382.54	1924
1925	26,566	300	1,592	300,237.60	64,220.00	364,457.60	54,000.00	310,457.60	20,800.00	7,700.00	281,957.60	15,000.00	266.957 60			266,957.60				266,957.60	1925
1926	26,866	300	1,592	303,567.60	64,220.00	367,787.60	56,000.00	311,787.60	20,800.00	7,700.00	283,287.60		283,287.60			283,287.60				283,287.60	1926
1927	27,166	300	1,592	306,897.60	64,220.00	371,117.60	56,000.00	315,117.60	20,800.00	8,325.00	285,992.60		285,992.60			285,992.60				285,992.60	1927
1928	27,466	300	1,592	310,227.60	64,220.00	374,447.60	58,000.00	316,447.60	20,800.00	8,325.00	287,322.60		287.322.60			287,322.60				287,322.60	1928
1929	27,766	300	1,592	313,557.60	64,220.00	377,777.60	58,000.00	319,777.60	20,800.00	8,325.00	290,652.60		290.652.60			290,652.60				290,652.60	1929
1930	28,066	300	1,592	316,887.60	64,220.00	381,107.60	60,000.00	321,107.60	20,800.00	8,325.00	291,982.60		291,982.60			291,982.60				291,982.60	1930
1931	28,366	300	1,592	320,217.60	64,220.00	384,437.60	60,000.00	324,437.60	20,800.00	8,325.00	295,312.60		295,312.60			295,312.60				295,312.60	1931
				8,522,729.60	2,327,830.00	10,850,559.60	1,515,699.93	9,334,859.67	559,050.00	198,675.00	8,577,134.67	630,000.00	7,947,134.67	380,395.06	119,604.94	7,566,739.61	22,500.00	60,000.00	640,000.00	6,844,239.61	

THE ABOVE ESTIMATE IS BASED ON THE FOLLOWING:

May 1st, 1892, there were 4,680 tap connections, of which 14 were free, leaving 4.666 tap connections paying for water. The average payment for the year ending April 30th, 1892, for each tap counting the whole number was $11.10 each.

A gradual increase of tap connections per annum is estimated, beginning with 1893 at 800 (733, being the increase for year ending April 30th, 1892,) reaching 900 per annum for the five years ending with 1899, and gradually decreasing to 300 per annum, the last seven years of the period of the charter 1931, at $11.10 each.

A charge of $5.00 per tap connection is made to cover tap, paving, &c.

An estimated income of $100.00 per annum for permits, and licenses is included.

An estimated income of $125.00 per annum for interest on defaulted payments is included. On May 1st, 1892, there were 622 hydrants set and ready for use, 592 of which are at a fixed annual charge of $29.220.

During May, 1892, the Common Council ordered 200 more hydrants to be set at a fixed annual charge of $35.00 each.

The estimate is based on an increase of 300 more hydrants during the next five years and a further increase of 500 hydrants during the next succeeding five years at an annual charge of $35.00 each.

Estimate of operating expenses, excluding taxes and interest on bonds, is based on actual running expenses for year ending April 30th, 1892, increase thereof is made from year to year, based on the increased supply required to furnish the wants of new consumers.

$700,000 has been estimated as the amount necessary to make the extensions required for complete service of the entire ward, and such total amount is set aside during the years ending with 1903.

Annual contributions to a sinking fund, to be deposited at 3 per cent. interest have been provided in such amounts as will pay off the present bonded indebtedness at maturity, the first Mortgage ($250,000) in 1901 and the second Mortgage ($250,000) in 1925

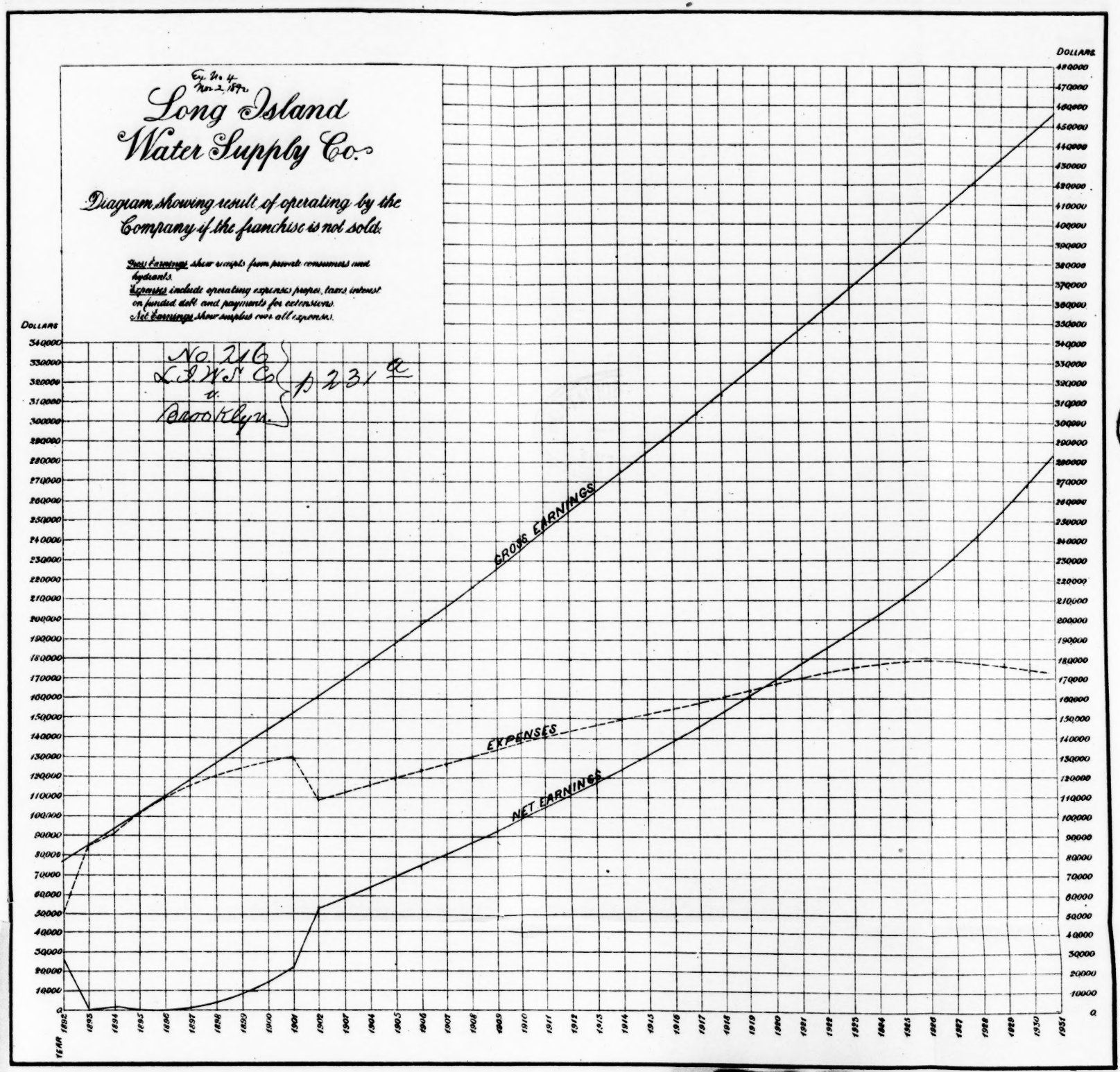
Ex. No. 4.
Nov. 2, 1892.

Long Island Water Supply Co.

Diagram showing result of operating by the Company if the franchise is not sold.

Gross Earnings show receipts from private consumers and hydrants.
Expenses include operating expenses proper, taxes interest on funded debt and payments for extensions.
Net Earnings show surplus over all expenses.

No. 216
L.I.W.S.Co.
v.
Brooklyn.
p. 231 &c



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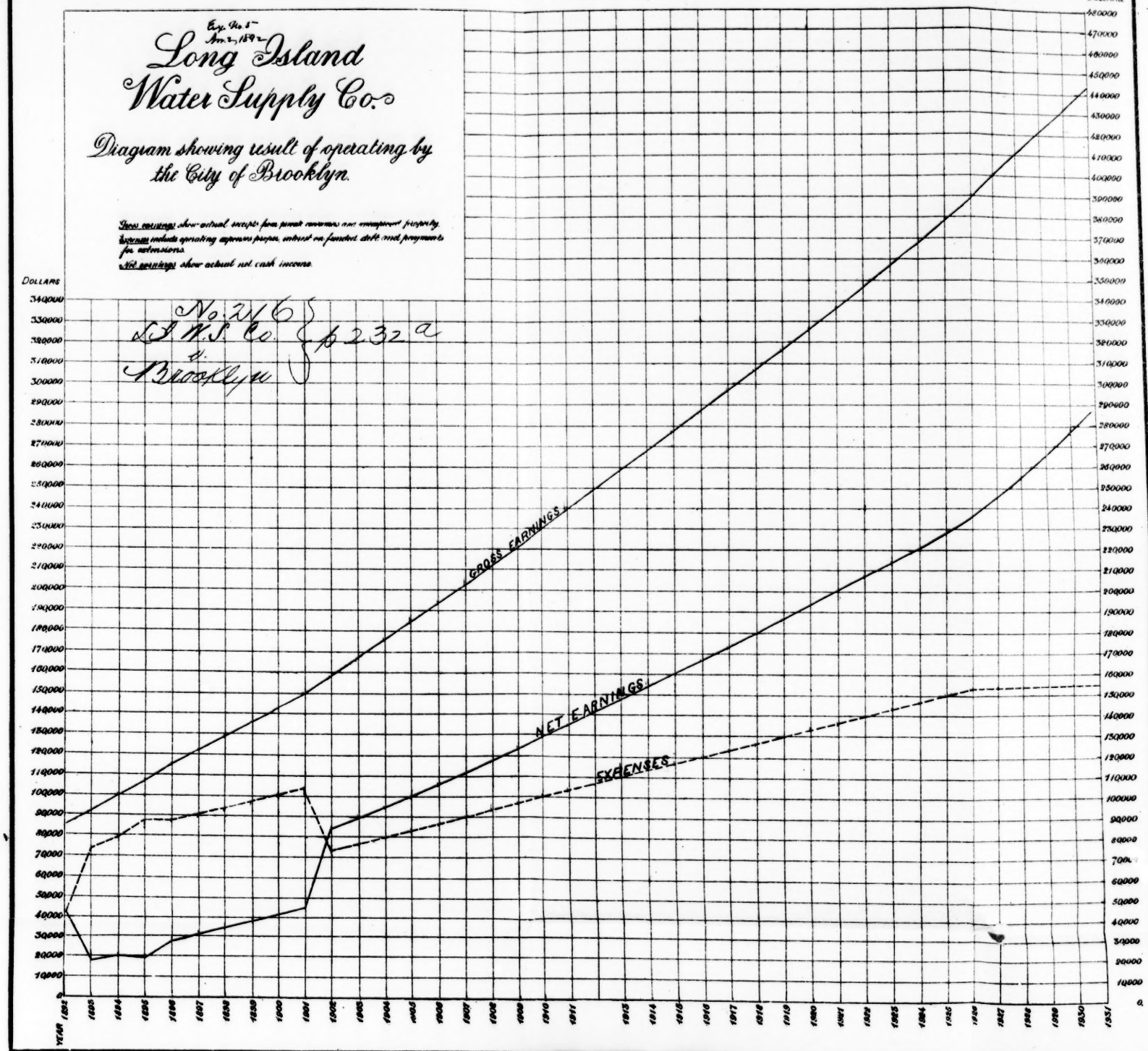
Exp. No. 1
Nov. 2, 1892

Long Island Water Supply Co.

Diagram showing result of operating by the City of Brooklyn.

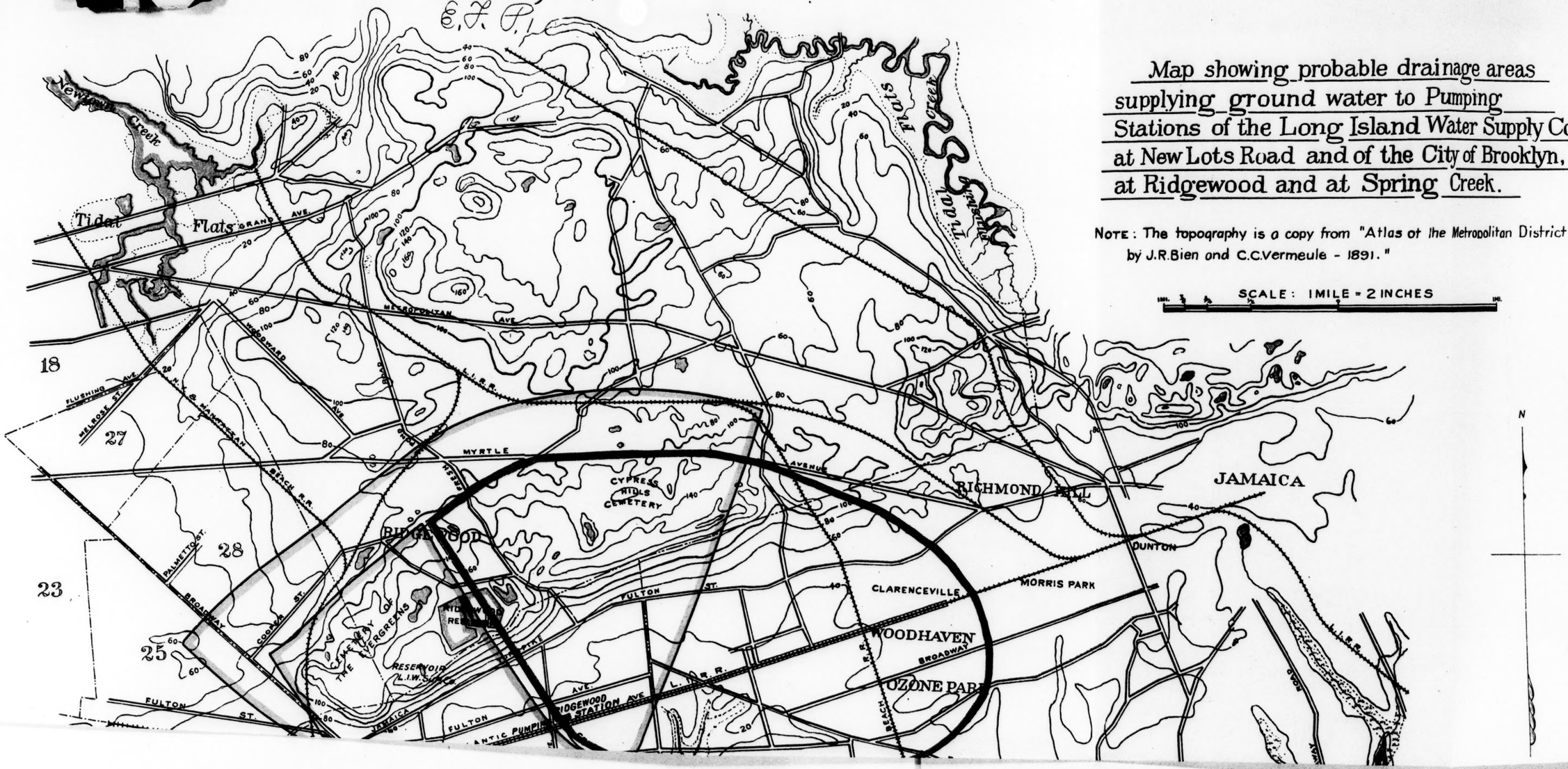
Gross earnings show actual receipts from permit revenues and miscellaneous property.
Expenses include operating expenses proper, interest on funded debt, and payments for extensions.
Net earnings show actual net cash income.

No. 216
L.I.W.S. Co. } p. 232 a
v.
Brooklyn



13

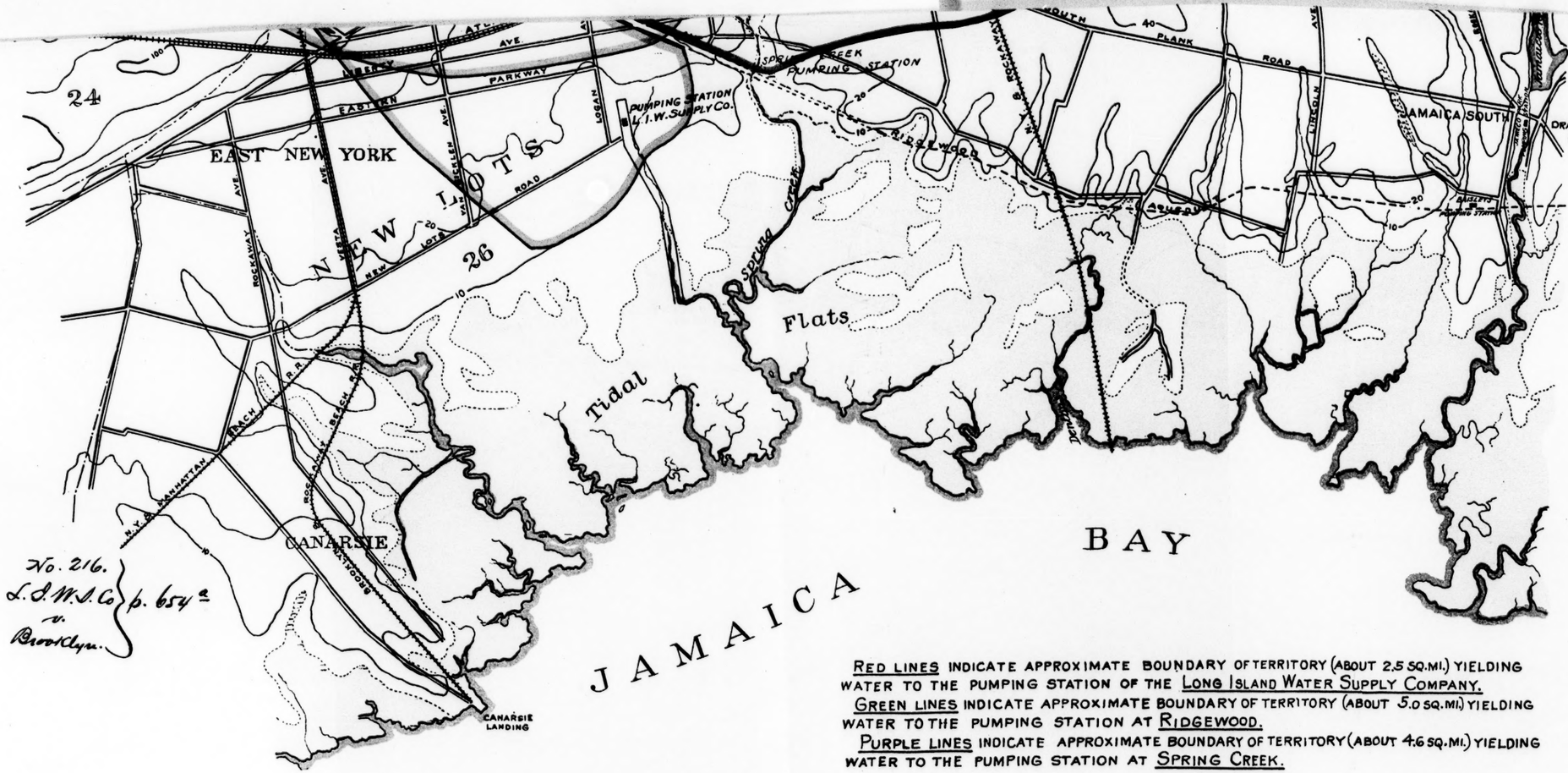
Ex. No. 1
Dec. 23, 1892
E. F. P. 1



Map showing probable drainage areas supplying ground water to Pumping Stations of the Long Island Water Supply Co., at New Lots Road and of the City of Brooklyn, at Ridgewood and at Spring Creek.

NOTE: The topography is a copy from "Atlas of the Metropolitan District, by J.R. Bien and C.C. Vermeule - 1891."

SCALE: 1 MILE = 2 INCHES



RED LINES INDICATE APPROXIMATE BOUNDARY OF TERRITORY (ABOUT 2.5 SQ. MI.) YIELDING WATER TO THE PUMPING STATION OF THE LONG ISLAND WATER SUPPLY COMPANY.

GREEN LINES INDICATE APPROXIMATE BOUNDARY OF TERRITORY (ABOUT 5.0 SQ. MI.) YIELDING WATER TO THE PUMPING STATION AT RIDGEWOOD.

PURPLE LINES INDICATE APPROXIMATE BOUNDARY OF TERRITORY (ABOUT 4.6 SQ. MI.) YIELDING WATER TO THE PUMPING STATION AT SPRING CREEK.

Mr. McDonald (page 655) referred to certain brown lines on Exhibit No. 1, December 23d, 1892, E. F. P.

Such lines are black on this Photo-lithograph of the original Exhibit.

no. 216
L.I.W.S. Co
Brooklyn
p. 662 a

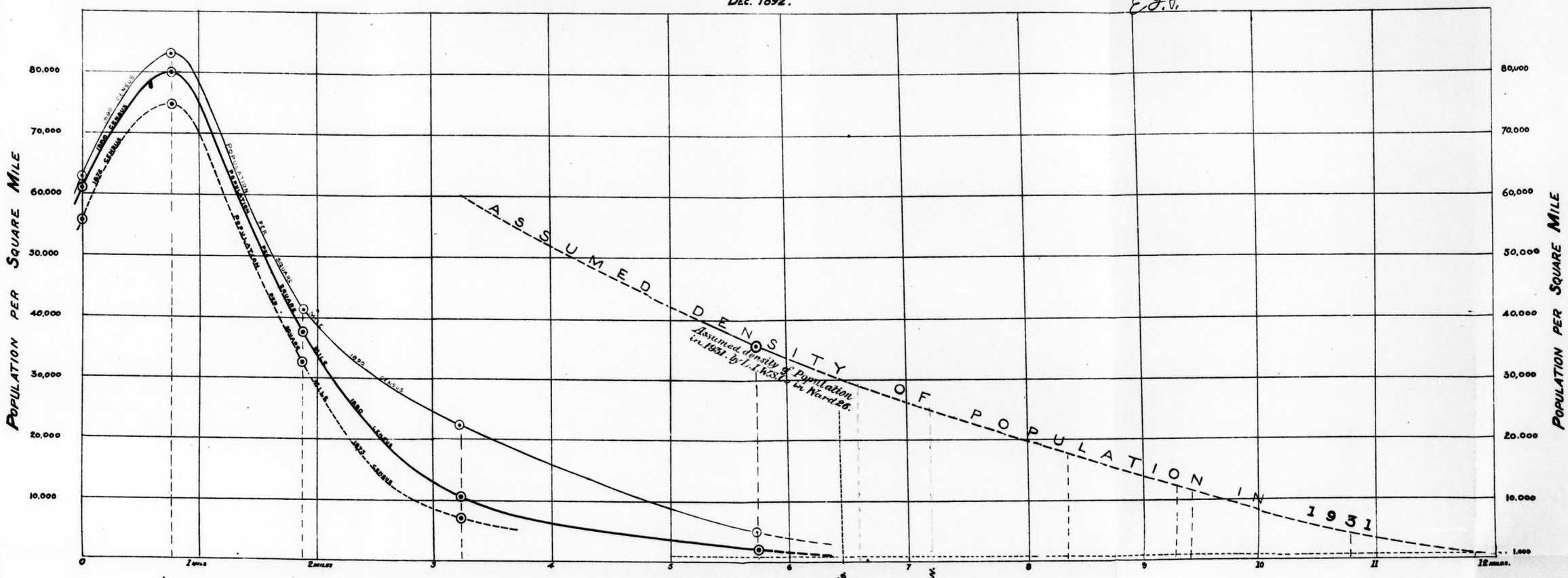
DIAGRAM SHOWING APPROXIMATE DENSITY OF POPULATION PER SQUARE MILE IN A PART OF THE CITY OF BROOKLYN,

PROJECTED UPON A LINE EXTENDING FROM THE INTERSECTION OF FULTON & TILLARY STS.,

VIA FULTON, FLATBUSH AND ATLANTIC AVE., TO JAMAICA.

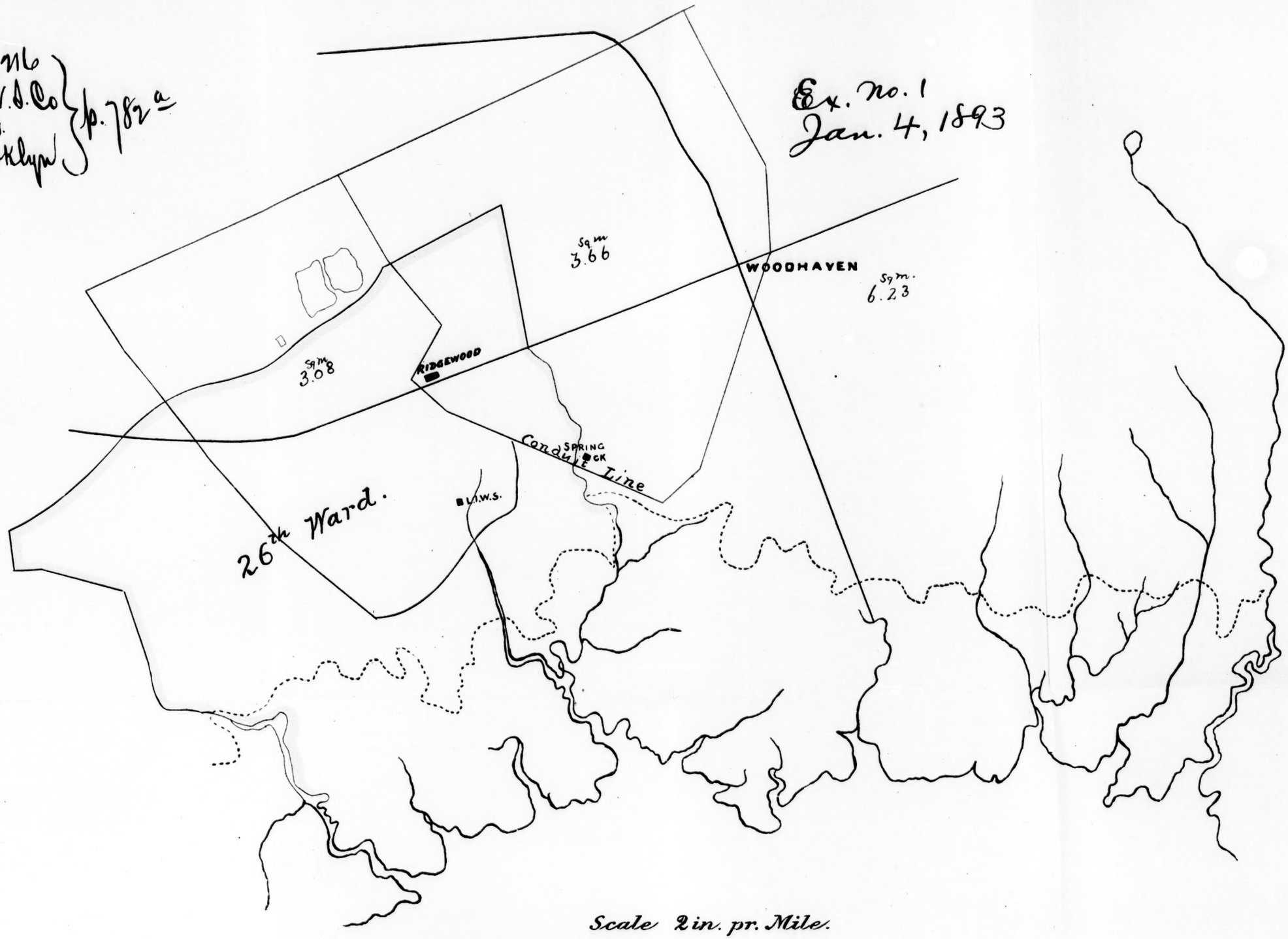
Ex. No. 2
Dec. 23, 1892
E.Y.P.

DEC. 1892.



No. 116
L.I.W.S. Co
v.
Brooklyn
p. 782a

Ex. no. 1
Jan. 4, 1893



Scale 2 in. pr. Mile.